

**LOCAL  
GOVERNMENT LAW  
AND  
ADMINISTRATION**

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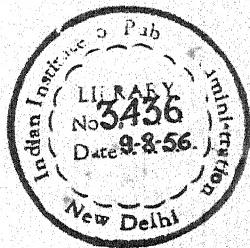
**VOLUME IV**

# LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By  
THE RIGHT HONOURABLE THE  
**LORD MACMILLAN**  
A LORD OF APPEAL IN ORDINARY  
AND OTHER LAWYERS

## COMPUTERISED

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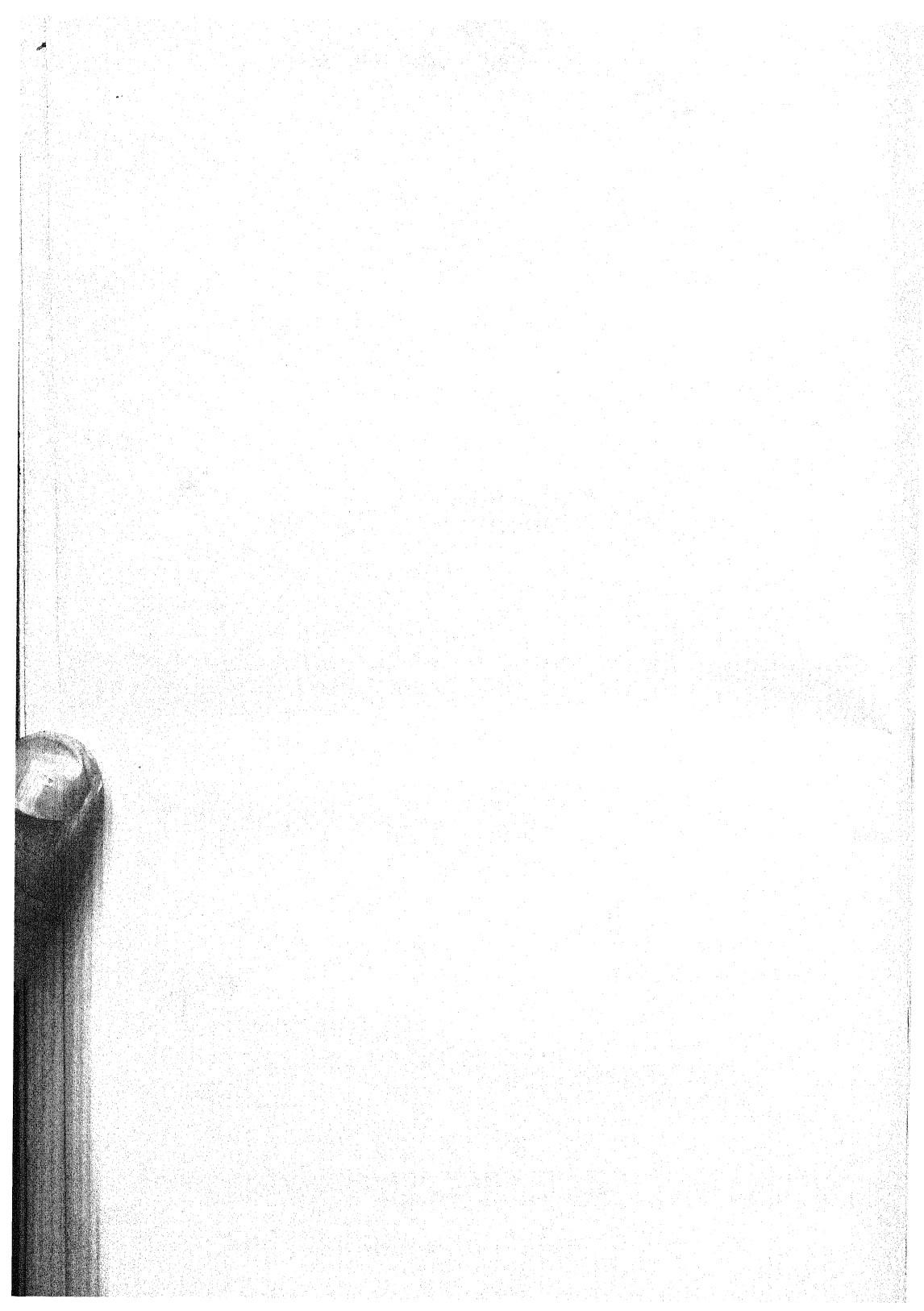
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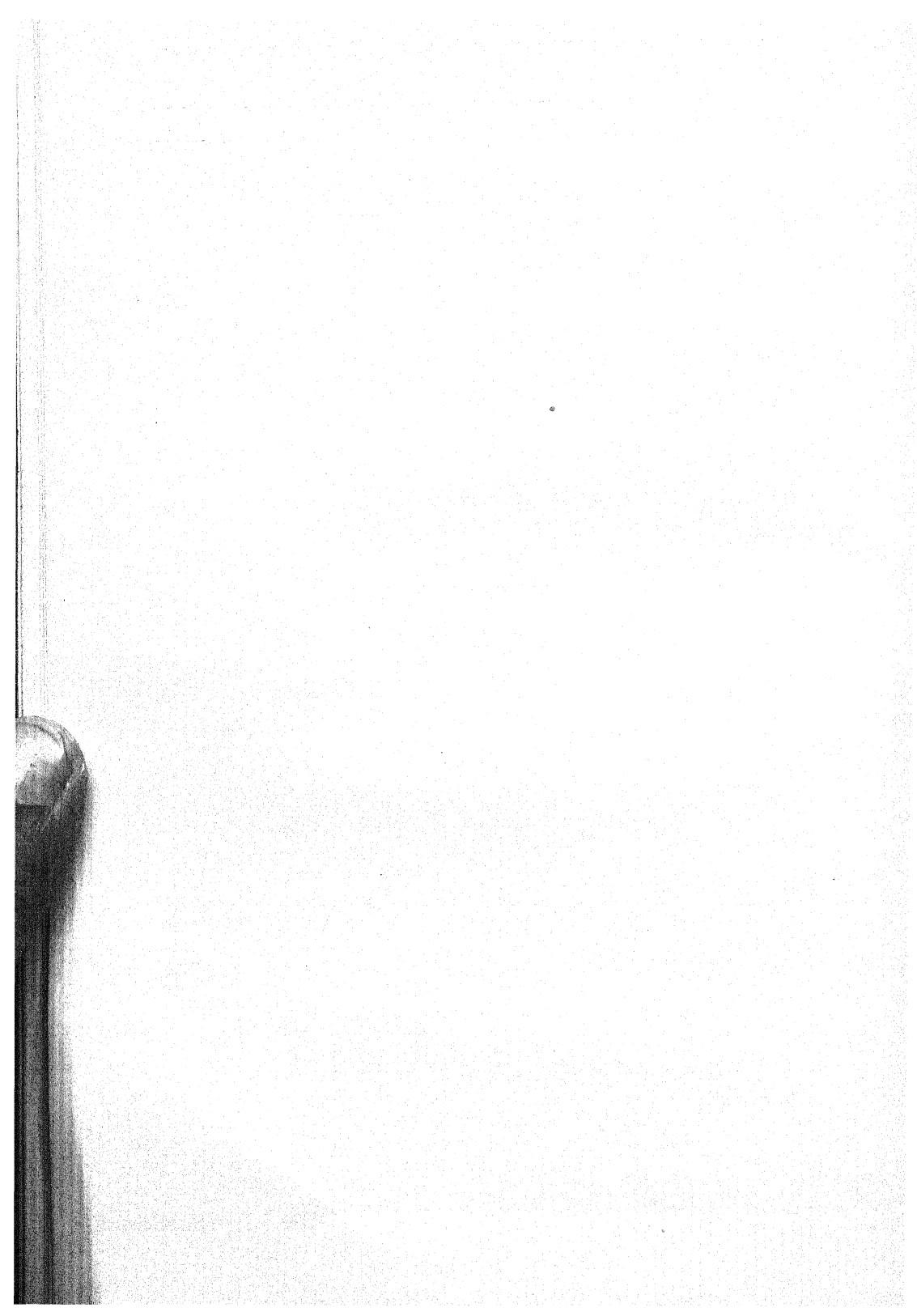
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## TABLE OF CONTENTS

---

|   | PAGE |
|---|------|
| <i>Table of Abbreviations</i>               | xii  |
| <i>Table of Statutes</i>                    | xiii |
| <i>Table of Cases</i>                       | xxxv |
| <br>  |      |
| CONSTITUTIONAL LAW AND LOCAL GOVERNMENT     | 1    |
| CONTINUATION SCHOOLS                        | 9    |
| CONTRACTS                                   | 12   |
| CONTRIBUTIONS TO COST OF WORKS AND SERVICES | 29   |
| CONTROL OF ELEVATION                        | 41   |
| CONVEYANCING                                | 46   |
| COPYRIGHT AS AFFECTING LOCAL AUTHORITIES    | 58   |
| CORONERS                                    | 62   |
| CORPORATE LAND                              | 78   |
| CORPSES                                     | 83   |
| CORRUPT AND ILLEGAL PRACTICES               | 88   |
| CORRUPTION IN OFFICE                        | 97   |
| COSTING                                     | 103  |
| COSTS                                       | 114  |
| COSTS IN CRIMINAL CASES                     | 118  |
| COTTAGE HOLDINGS                            | 126  |
| COUNSEL, EMPLOYMENT OF                      | 130  |
| COUNTY ACCOUNTS                             | 134  |
| COUNTY BOROUGH                              | 147  |
| COUNTY BOROUGH, CREATION OR ALTERATION OF   | 156  |
| COUNTY COUNCIL                              | 161  |
| COUNTY COUNCILLOR                           | 178  |
| COUNTY DISTRICTS                            | 188  |
| COUNTY ELECTORAL DIVISIONS                  | 190  |
| COUNTY OF A CITY OR TOWN                    | 194  |
| COUNTY POLICE                               | 199  |
| COUNTY REVIEW                               | 214  |
| COUNTY SURVEYOR                             | 236  |
| COUNTY VALUATION COMMITTEE                  | 241  |
| COUNTY VALUER                               | 247  |
| CREAM                                       | 251  |
| CREATION OF CITIES                          | 253  |

|   | PAGE |
|---|------|
| CREMATION - - - - -                               | 254  |
| CRIMINAL LIABILITY OF LOCAL AUTHORITIES - - - - - | 262  |
| CRIMINAL LUNATICS - - - - -                       | 267  |
| CROWN PROPERTY - - - - -                          | 269  |
| CUSTOS ROTULORUM - - - - -                        | 276  |
| DAMAGE, COMPENSATION FOR - - - - -                | 278  |
| DANGEROUS BUILDINGS - - - - -                     | 286  |
| DAY NURSERIES - - - - -                           | 292  |
| DEDICATION AND ADOPTION OF HIGHWAYS - - - - -     | 295  |
| DEFAMATION - - - - -                              | 305  |
| DEFAULTING AUTHORITY - - - - -                    | 312  |
| DEFINITIONS (STATUTORY) - - - - -                 | 318  |
| DELEGATION OF HIGHWAY POWERS - - - - -            | 324  |
| DENSITY OF BUILDINGS - - - - -                    | 337  |
| DERATING - - - - -                                | 342  |
| DESTRUCTIVE INSECTS AND PESTS - - - - -           | 364  |
| DIFFERENTIAL RATING - - - - -                     | 372  |
| DIRECTOR OF EDUCATION - - - - -                   | 377  |
| DISCOUNT FOR RATES - - - - -                      | 386  |
| DISEASES - - - - -                                | 389  |
| DISEASES OF ANIMALS - - - - -                     | 394  |
| DISINFECTION - - - - -                            | 415  |

## TABLE OF ABBREVIATIONS

|  |           |
|--|-----------|
| Attorney-General .. . . . .                      | A.-G.     |
| Brothers .. . . . .                              | Bros.     |
| Company .. . . . .                               | Co.       |
| Corporation .. . . . .                           | Corpn.    |
| Home Office .. . . . .                           | H.O.      |
| Justices .. . . . .                              | JJ.       |
| Limited .. . . . .                               | Ltd.      |
| London County Council .. . . . .                 | L.C.C.    |
| Local Government Act .. . . . .                  | L.G.A.    |
| Medical Officer of Health .. . . . .             | M.O.H.    |
| Ministry of Agriculture and Fisheries .. . . . . | M. of A.  |
| Ministry of Health .. . . . .                    | M. of H.  |
| Ministry of Transport .. . . . .                 | M. of T.  |
| Public Health Acts .. . . . .                    | P.H.A.    |
| Railway Company .. . . . .                       | Rail. Co. |
| Rating and Valuation Act .. . . . .              | R. & V.A. |
| Rural District Council .. . . . .                | R.D.C.    |
| Statutory Rules and Orders .. . . . .            | S.R. & O. |
| Urban District Council .. . . . .                | U.D.C.    |

## TABLE OF STATUTES

|   | PAGE                                      |
|---|---|
| 22 Hen. 8, c. 5.  | 236                                       |
| 34 & 35 Hen. 8, c. 26.  | 196                                       |
| 37 Hen. 8, c. 1.  | 276                                       |
| 3 & 4 Edw. 6, c. 1.   | 276                                       |
| 43 Eliz. c. 2.  | 272                                       |
| 29 Car. 2, c. 3.  | 265                                       |
| 1 Will. & Mar. c. 21.<br>Sess. 2, c. 2                                      | 276                                       |
| 12 & 13 Will. 3, c. 2.  | 2   |
| 7 Anne, c. 20.  | 2   |
| 20 Geo. 2, c. 42.   | 57  |
| 38 Geo. 3, c. 52.   | 320                                       |
| 39 & 40 Geo. 3, c. 94.  | 196                                       |
| 43 Geo. 3, c. 59.   | 267                                       |
| 48 Geo. 3, c. 75.   | 236                                       |
| 51 Geo. 3, c. 37.<br>c. 100.  | 84, 85                                    |
| 4 Geo. 4, c. 60.  | 154                                       |
| 5 Geo. 4, c. 83.  | 196                                       |
| 7 Geo. 4, c. 63.<br>c. 64.  | 265                                       |
| 7 & 8 Geo. 4, c. 28.  | 118                                       |
| 9 Geo. 4, c. 43.  | 196                                       |
| 1 & 2 Will. 4, c. 41.   | 227                                       |
| 2 & 3 Will. 4, c. 45.<br>c. 71.<br>c. 75.                                   | 211                                       |
| 3 & 4 Will. 4, c. 90.   | 216                                       |
| 5 & 6 Will. 4, c. 43.<br>c. 50.   | 295                                       |
| c. 62.  | 83, 84                                    |
| c. 76.  | 316                                       |
| 6 & 7 Will. 4, c. 12.<br>c. 19.<br>c. 86.                                   | 211                                       |
| c. 87.  | 295                                       |
| c. 103.   | 374                                       |
| 1 & 2 Vict. c. 14.<br>c. 80.  | 320                                       |
| 2 & 3 Vict. c. 71.<br>c. 93.  | 79, 80, 195,<br>196, 253                  |
| 3 & 4 Vict. c. 88.  | 227                                       |
| 4 & 5 Vict. c. 30.  | 276                                       |
| 7 & 8 Vict. c. 33.<br>c. 92.  | 154                                       |
| 8 & 9 Vict. c. 18.  | 276                                       |
| (Statute of Bridges, 1530-1)  | 276                                       |
| (Ordinances in Wales, 1542-3)   | 276                                       |
| (Custos Rotulorum, 1545)  | 276                                       |
| (Custos Rotulorum, 1549)  | 276                                       |
| (Poor Relief Act, 1601)   | 272                                       |
| (Statute of Frauds, 1677)   | 265                                       |
| (Clerks of the Peace, 1688)   | 276                                       |
| (Bill of Rights, 1688)  | 2   |
| (Act of Settlement, 1700)   | 2   |
| (Middlesex Registry Act, 1708)  | 57  |
| (Wales and Berwick Act, 1746)   | 320                                       |
| (Counties of Cities Act, 1798)  | 196                                       |
| (Criminal Lunatics Act, 1800)   | 267                                       |
| (Bridges Act, 1803)   | 236                                       |
| (Burial of Drowned Persons Act, 1808)                                       | 84, 85                                    |
| (Marriage of Lunatics Act, 1811)  | 154                                       |
| (Counties of Cities Act, 1811)  | 196                                       |
| (Lotteries Act, 1823)   | 265                                       |
| (Vagrancy Act, 1824)  | 118                                       |
| (County Buildings Act, 1826)  | 196                                       |
| (Criminal Law Act, 1826)  | 119                                       |
| (Criminal Law Act, 1827)  | 263                                       |
| (Division of Counties Act, 1828)  | 227                                       |
| (Special Constables Act, 1831)  | 211                                       |
| (Representation of the People Act, 1832) (Reform<br>Act)                    | 216                                       |
| (Prescription Act, 1832)  | 295                                       |
| (Anatomy Act, 1832)   | 83, 84                                    |
| (Lighting and Watching Act, 1833)   | 316                                       |
| (Special Constables Act, 1835)  | 211                                       |
| (Highway Act, 1835)—<br>s. 23 . . . . .                                     | 295                                       |
| s. 33 . . . . .   | 374                                       |
| (Statutory Declarations Act, 1835)  | 320                                       |
| (Municipal Corporations Act, 1835)  | 79, 80, 195,<br>196, 253                  |
| (Petty Sessional Divisions Act, 1836)                                       | 227                                       |
| (Durham (County Palatine) Act, 1836)  | 276                                       |
| (Births and Deaths Registration Act, 1836)                                  | 154                                       |
| (Liberties Act, 1836)   | 276                                       |
| (Berwick-upon-Tweed Act, 1836)  | 195                                       |
| (Criminal Lunatics Act, 1838)   | 267                                       |
| (Special Constables Act, 1838)  | 211                                       |
| (Metropolitan Police Courts Act, 1839)                                      | 429                                       |
| (County Police Act, 1839)   | 199, 200, 201, 202,<br>203, 206, 207, 212 |
| (County Police Act, 1840)   | 199, 200, 201, 202,<br>206, 209, 210, 212 |
| (Ordnance Survey Act, 1841)   | 320                                       |
| (County Rates Act, 1844)  | 212                                       |
| (Coroners Act, 1844)  | 63, 65                                    |
| (Lands Clauses Consolidation Act, 1845)—<br>ss. 18 <i>et seq.</i> . . . . . | 288                                       |
| s. 68 . . . . .   | 177                                       |
| s. 83 . . . . .   | 117                                       |
| ss. 127-132 . . . . .   | 177                                       |

|                       | PAGE  |
|-----------------------|---|
| 8 & 9 Vict. c. 118.   | 304   |
| 10 & 11 Vict. c. 14.  | 402   |
| c. 17.                | 282   |
| c. 34.                | 282, 286,   |
| c. 65.                | 287, 288, 289   |
| c. 69.                | 261   |
| 11 & 12 Vict. c. 43.  | 411   |
| c. 78.                | 118   |
| c. 101.               | 201   |
| 13 & 14 Vict. c. 21.  | 318   |
| 14 & 15 Vict. c. 42.  | 275   |
| c. 55.                | 196   |
| c. 81.                | 267   |
| 15 & 16 Vict. c. 85.  | 27, 255, 261  |
| 17 & 18 Vict. c. 102. | 124   |
| 18 & 19 Vict. c. 120. | 96, 272, 285  |
| c. 122.               | 288   |
| c. 128.               | 255   |
| 19 & 20 Vict. c. 69.  | 199, 200,   |
|                       | 201, 209, 210, 212  |
| 20 Vict. c. 2.        | 199, 200  |
| 20 & 21 Vict. c. 81.  | 72, 258, 260  |
| 22 Vict. c. 27.       | 81  |
| 22 & 23 Vict. c. 17.  | 100, 118, 124   |
| c. 32.                | 199, 203,   |
| c. 65.                | 204, 206, 207   |
| 23 & 24 Vict. c. 75.  | 227   |
| 24 & 25 Vict. c. 98.  | 267   |
| c. 100.               | 260   |
| c. 125.               | 266   |
| 25 & 26 Vict. c. 102. | 272,  |
|                       | 285   |
| 26 & 27 Vict. c. 65.  | 274   |
| c. 125.               | 276   |
| 28 & 29 Vict. c. 37.  | 162   |
| c. lxxvi.             | (Drighlington and Gildersome Gaslight Company             |
|                       | Act, 1865) . . . . .                                      |
| 29 & 30 Vict. c. 62.  | 253   |
| 31 & 32 Vict. c. 22.  | 275   |
| c. 24.                | 201   |
| c. 37.                | (Capital Punishment Amendment Act, 1868) . . . . .        |
| c. 110.               | 75,   |
| c. 119.               | 83, 84  |
| c. 121.               | 413   |
| c. 122.               | 273   |
| 32 & 33 Vict. c. 41.  | 121   |
| c. 47.                | (Regulation of Railways Act, 1868) . . . . .              |
| c. 67.                | 121   |
| c. 70.                | (Pharmacy Act, 1868) . . . . .                            |
| c. 73.                | 264   |
| 33 & 34 Vict. c. 13.  | 160   |
| c. 75.                | (Poor Law Amendment Act, 1868) . . . . .                  |
| c. 77.                | 389   |
| 34 & 35 Vict. c. 16.  | (Poor Rate Assessment and Collection Act, 1869) . . . . . |
| 35 & 36 Vict. c. 33.  | 212   |
| c. 68.                | (High Constables Act, 1869) . . . . .                     |
| c. 77.                | 363, 364  |
| c. 79.                | (Valuation (Metropolis) Act, 1869) . . . . .              |
| c. 91.                | 366   |
| c. 92.                | (Contagious Diseases (Animals) Act, 1869) . . . . .       |
| 37 & 38 Vict. c. 45.  | 270   |
| c. 88.                | (Telegraph Act, 1869) . . . . .                           |
| 38 & 39 Vict. c. 55.  | 320   |
|                       | (Survey Act, 1870) . . . . .                              |
|                       | (Elementary Education Act, 1870) . . . . .                |
|                       | 22  |
|                       | (Juries Act, 1870) . . . . .                              |
|                       | 69  |
|                       | (Anatomy Act, 1871) . . . . .                             |
|                       | 84  |
|                       | (Ballot Act, 1872) . . . . .                              |
|                       | 88  |
|                       | (Military Forces Localization Act, 1872) . . . . .        |
|                       | 81  |
|                       | (Metalliferous Mines Regulation Act, 1872) . . . . .      |
|                       | 347   |
|                       | (Public Health Act, 1872) . . . . .                       |
|                       | 218   |
|                       | (Borough Funds Act, 1872) . . . . .                       |
|                       | 115, 157  |
|                       | (Parish Constables Act, 1872) . . . . .                   |
|                       | 211, 212  |
|                       | (County of Hertford and Liberty of St. Alban              |
|                       | Act, 1874) . . . . .                                      |
|                       | 276   |
|                       | (Births and Deaths Registration Act, 1874) . . . . .      |
|                       | 74  |
|                       | (Public Health Act, 1875) . . . . .                       |
|                       | 87, 117, 151, 189, 333                                    |
|                       | s. 4 . . . . .  |
|                       | 287, 321, 423, 424, 425                                   |

## TABLE OF STATUTES

xv

| 38 & 39 Vict. c. 55. | (Public Health Act, 1875)— <i>continued.</i>             | PAGE  |
|----------------------|--|---|
| s. 5                 | .  | 287   |
| s. 6                 | .  | 148, 287                                    |
| s. 16                | .  | 281   |
| s. 30                | .  | 33  |
| s. 39                | .  | 284   |
| s. 42                | .  | 302   |
| s. 46                | .  | 418, 426, 427                               |
| s. 54                | .  | 281   |
| s. 80                | .  | 420   |
| s. 92                | .  | 313   |
| s. 102               | .  | 428   |
| s. 103               | .  | 428   |
| s. 116               | .  | 252   |
| s. 117               | .  | 279, 280, 281, 284                          |
| s. 120               | .  | 416, 417, 425, 426, 428                     |
| s. 121               | .  | 283, 416, 425, 427, 428                     |
| s. 122               | .  | 416   |
| s. 126               | .  | 416, 425                                    |
| s. 127               | .  | 419, 425                                    |
| s. 128               | .  | 416, 418, 425, 426                          |
| s. 129               | .  | 425   |
| s. 130               | .  | 391, 419, 420, 423                          |
| s. 131               | .  | 154, 390, 392, 393                          |
| s. 134               | .  | 86, 419, 420                                |
| s. 141               | .  | 85  |
| s. 142               | .  | 85, 86                                      |
| s. 144               | .  | 279   |
| s. 146               | .  | 33  |
| s. 147               | .  | 34  |
| s. 149               | .  | 324, 328                                    |
| s. 150               | .  | 17, 35, 110, 274, 326                       |
| s. 155               | .  | 283   |
| s. 157               | .  | 42, 325, 337, 338                           |
| s. 160               | .  | 287   |
| s. 161               | .  | 302, 316                                    |
| s. 164               | .  | 35  |
| s. 174               | .  | 12, 13, 17, 18, 20, 21                      |
| s. 176               | .  | 176   |
| s. 179               | .  | 278, 283, 284                               |
| s. 180               | .  | 278, 283, 284                               |
| s. 181               | .  | 278, 284                                    |
| s. 200               | .  | 49  |
| s. 211 (4)           | .  | 372   |
| s. 235               | .  | 51  |
| s. 247               | .  | 185   |
| s. 249               | .  | 116   |
| s. 265               | .  | 311, 312                                    |
| s. 276               | .  | 287, 316                                    |
| s. 279               | .  | 29, 423                                     |
| s. 285               | .  | 31, 35                                      |
| s. 299               | .  | 312, 313, 314                               |
| s. 300               | .  | 312, 313                                    |
| s. 301               | .  | 312   |
| s. 302               | .  | 312   |
| s. 308               | .  | 278, 279, 280, 281, 282, 283, 284, 285, 427 |
| s. 316               | .  | 287   |
| s. 327               | .  | 270, 274                                    |
| c. 63.               | (Sale of Food and Drugs Act, 1875)                       | 264, 265                                    |
| c. 83.               | (Local Loans Act, 1875)                                  | 32  |
| c. 84.               | (Parliamentary Elections (Returning Officers) Act, 1875) | 96  |
| c. 86.               | (Conspiracy and Protection of Property Act, 1875)        | 28  |
| 39 & 40 Vict. c. 75. | (Rivers Pollution Prevention Act, 1876)                  | 33  |
| 40 & 41 Vict. c. 60. | (Canal Boats Act, 1877)                                  | 424   |
| c. 68.               | (Destructive Insects Act, 1877)                          | 364, 365, 366, 367, 370, 371, 397           |

|                      |   | PAGE  |
|----------------------|---|---|
| 41 & 42 Vict. c. 49. | (Weights and Measures Act, 1878)  | 166   |
| c. 74.               | (Contagious Diseases (Animals) Act, 1878)                                     | 412   |
| c. 77.               | (Highways and Locomotives (Amendment) Act, 1878)                              | 34, 237, 324, 329   |
| 42 & 43 Vict. c. 6.  | (District Auditors Act, 1879)   | 137   |
| c. 17.               | (House of Commons Costs Taxation Act, 1879)                                   | 116   |
| c. 22.               | (Prosecution of Offences Act, 1879)   | 75  |
| c. 30.               | (Sale of Food and Drugs Act Amendment Act, 1879)                              | 264   |
| c. 31.               | (Public Health (Interments) Act, 1879)  | 255, 261  |
| c. 59.               | (Civil Procedure Acts Repeal Act, 1879)                                       | 196   |
| 43 & 44 Vict. c. 9.  | (Statutes (Definition of Time) Act, 1880)                                     | 319   |
| 44 & 45 Vict. c. 44. | (Solicitors Remuneration Act, 1881)   | 117   |
| c. 58.               | (Army Act, 1881)  | 208   |
| 45 & 46 Vict. c. 19. | (Interments (felo de se) Act, 1882)   | 74  |
| c. 21.               | (Places of Worship Sites Amendment Act, 1882)                                 | 81  |
| c. 50.               | (Municipal Corporations Act, 1882)  | 82, 92, 96, 97, 148, 151, 198, 253, 254, 319                    |
|                      | s. 6 . . . . .  | 196   |
|                      | s. 7 . . . . .  | 88, 196   |
|                      | s. 11 . . . . .   | 186   |
|                      | s. 12 . . . . .   | 183, 186  |
|                      | s. 22 . . . . .   | 49  |
|                      | (3) . . . . .   | 23  |
|                      | s. 27 (2) . . . . .   | 143   |
|                      | s. 39 . . . . .   | 186   |
|                      | s. 81 . . . . .   | 89  |
|                      | s. 107 . . . . .  | 78  |
|                      | s. 108 . . . . .  | 79  |
|                      | (1) . . . . .   | 81  |
|                      | s. 109 . . . . .  | 79, 81  |
|                      | s. 110 . . . . .  | 80  |
|                      | s. 111 . . . . .  | 80, 81  |
|                      | s. 119 . . . . .  | 325   |
|                      | s. 139 . . . . .  | 79  |
|                      | s. 170 . . . . .  | 197   |
|                      | s. 171 . . . . .  | 62, 64  |
|                      | (2) . . . . .   | 66  |
|                      | s. 188 . . . . .  | 196   |
|                      | s. 191 . . . . .  | 152   |
|                      | (6) . . . . .   | 210   |
|                      | s. 226 (3) . . . . .  | 311   |
| c. 56.               | (Electric Lighting Act, 1882)   | 175   |
| 46 & 47 Vict. c. 37. | (Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883)             | 282   |
| c. 38.               | (Trial of Lunatics Act, 1883)   | 267   |
| c. 51.               | (Corrupt and Illegal Practices Prevention Act, 1883)                          | 90, 124, 186  |
| c. 59.               | (Epidemic and other Diseases Prevention Act, 1883)                            | 419   |
| 47 & 48 Vict. c. 31. | (Colonial Prisoners Removal Act, 1884)  | 267   |
| c. 54.               | (Yorkshire Registries Act, 1884)  | 57  |
| c. 64.               | (Criminal Lunatics Act, 1884)   | 267, 268, 269   |
| c. 70.               | (Municipal Elections (Corrupt and Illegal Practices) Act, 1884)               | 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 186                     |
| 48 & 49 Vict. c. 4.  | (Yorkshire Registries Amendment Act, 1884)                                    | 57  |
| c. 26.               | (Yorkshire Registries Amendment Act, 1885)                                    | 57  |
| c. 35.               | (Public Health (Ships, etc.) Act, 1885)                                       | 424   |
| c. 72.               | (Housing of the Working Classes Act, 1885)                                    | 424   |
| 49 & 50 Vict. c. 20. | (Burial of Drowned Persons Act, 1886)   | 84, 85  |
| c. 38.               | (Riot (Damages) Act, 1886)  | 152   |
| c. 57.               | (Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886) | 96  |
| 50 & 51 Vict. c. 9.  | (Police Disabilities Removal Act, 1887)                                       | 206   |
| c. 28.               | (Merchandise Marks Act, 1887)   | 124   |
| c. 55.               | (Sheriffs Act, 1887)  | 196, 198, 201   |
| c. 71.               | (Coroners Act, 1887)  | 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 261 |

| 51 & 52 Vict. c. 41.                   | PAGE                              |
|--|-----------------------------------|
| (Local Government Act, 1888) . . . . . | 77, 217, 218, 231                 |
| s. 1 . . . . .                         | 161, 179                          |
| s. 2 . . . . .                         | 186                               |
| (3) . . . . .                          | 190                               |
| s. 3 . . . . .                         | 3, 152, 161, 164, 237, 240        |
| (i) . . . . .                          | 212                               |
| (xi) . . . . .                         | 63                                |
| s. 5 . . . . .                         | 62                                |
| (2)—(4) . . . . .                      | 64                                |
| s. 6 . . . . .                         | 3, 164                            |
| s. 9 . . . . .                         | 164, 201                          |
| (1) . . . . .                          | 199                               |
| (2) . . . . .                          | 201                               |
| s. 10 . . . . .                        | 153                               |
| s. 11 . . . . .                        | 164, 237, 324                     |
| (1) . . . . .                          | 325, 332                          |
| (10) . . . . .                         | 33                                |
| s. 12 . . . . .                        | 164                               |
| s. 13 . . . . .                        | 164                               |
| s. 14 (2) . . . . .                    | 33                                |
| s. 24 (2) (c) . . . . .                | 39                                |
| s. 28 (2) . . . . .                    | 25, 169                           |
| s. 30 . . . . .                        | 26, 151, 169, 199                 |
| s. 31 . . . . .                        | 148, 156                          |
| s. 33 . . . . .                        | 152                               |
| s. 34 . . . . .                        | 85, 149, 152, 253                 |
| (2) . . . . .                          | 152                               |
| (3) . . . . .                          | 149                               |
| (4) . . . . .                          | 64, 152                           |
| (5) . . . . .                          | 64                                |
| s. 35 . . . . .                        | 162, 194                          |
| (8) . . . . .                          | 194                               |
| s. 36 . . . . .                        | 162                               |
| s. 37 . . . . .                        | 162                               |
| s. 38 . . . . .                        | 64, 162, 194                      |
| (8) . . . . .                          | 194                               |
| s. 39 . . . . .                        | 162, 194, 200                     |
| s. 40 . . . . .                        | 161                               |
| (4) . . . . .                          | 193                               |
| s. 41 (7) . . . . .                    | 146                               |
| s. 46 . . . . .                        | 64                                |
| (1) . . . . .                          | 162                               |
| s. 49 . . . . .                        | 162                               |
| s. 50 . . . . .                        | 161                               |
| (1) (a) . . . . .                      | 162                               |
| s. 51 . . . . .                        | 190                               |
| s. 54 . . . . .                        | 159, 162, 190, 191, 192, 223, 234 |
| (1) (d) . . . . .                      | 157, 158                          |
| s. 57 . . . . .                        | 132, 236                          |
| s. 59 . . . . .                        | 192, 220, 376                     |
| (4) (d) . . . . .                      | 372                               |
| (e) . . . . .                          | 372                               |
| s. 62 . . . . .                        | 376                               |
| s. 64 . . . . .                        | 175                               |
| s. 65 (2) . . . . .                    | 176                               |
| s. 66 . . . . .                        | 311                               |
| s. 67 . . . . .                        | 85                                |
| s. 68 (7) . . . . .                    | 146                               |
| s. 69 . . . . .                        | 174                               |
| s. 70 . . . . .                        | 174                               |
| s. 71 . . . . .                        | 146                               |
| (1) . . . . .                          | 136, 137                          |
| (2) . . . . .                          | 143                               |
| s. 73 . . . . .                        | 146                               |
| s. 75 . . . . .                        | 88, 93, 186                       |
| (5) . . . . .                          | 94                                |
| (17)—(20) . . . . .                    | 96                                |
| s. 79 (2) . . . . .                    | 325                               |



|  | PAGE   |
|--|--|
| 54 & 55 Vict. c. 76.                                       |  |
| (Public Health (London) Act, 1891)— <i>continued.</i>      |  |
| s. 134 . . . . .   | 317  |
| s. 135 . . . . .   | 317  |
| 55 & 56 Vict. c. 11.                                       |  |
| (Mortmain and Charitable Uses Act Amendment<br>Act, 1892)  | 48   |
| c. 29.   | 175  |
| c. 43.   | 80, 175  |
| c. 53.   | 175  |
| c. 56.   | 62, 67, 77   |
| c. 57.   | 35, 110, 154,<br>240, 326, 333, 334, 335   |
| 56 & 57 Vict. c. 6.  |  |
| (Police Disabilities Removal Act, 1893)                    | 206, 207   |
| c. 39.   | 129  |
| c. 61.   | 18, 114,<br>115, 207   |
| c. 66.   | 366, 401   |
| c. 68.   | 26, 34, 392  |
| c. 73.   | 152, 217, 326  |
| s. 7 . . . . .   | 316  |
| s. 8 (1) (b) . . . . .                                     | 79   |
| (h) . . . . .  | 78, 79   |
| (k) . . . . .  | 35   |
| s. 16 . . . . .  | 170, 314   |
| s. 19 (8) . . . . .  | 314  |
| s. 21 . . . . .  | 148, 188, 189, 319   |
| (3) . . . . .  | 149, 188   |
| s. 25 . . . . .  | 324  |
| s. 26 . . . . .  | 170, 314, 325, 332   |
| (7) . . . . .  | 153  |
| s. 27 (1) . . . . .  | 153  |
| (2) . . . . .  | 153  |
| s. 32 . . . . .  | 153  |
| s. 33 . . . . .  | 78   |
| s. 35 . . . . .  | 148, 188   |
| s. 48 . . . . .  | 96   |
| (3) . . . . .  | 96   |
| (b) . . . . .  | 96   |
| s. 56 . . . . .  | 49   |
| (1) . . . . .  | 25   |
| s. 57 . . . . .  | 49   |
| s. 58 (5) . . . . .  | 133  |
| s. 62 . . . . .  | 148, 153, 189  |
| s. 63 . . . . .  | 170, 314, 316  |
| 57 & 58 Vict. c. 19.                                       |  |
| c. 57.   |  |
| (Merchandise Marks (Prosecutions) Act, 1894)               | 124  |
| (Diseases of Animals Act, 1894)                            | 166, 168, 205,<br>208, 366, 370, 371, 394, 395, 396, 397, 398, 399, 400,<br>401, 402, 403, 407, 408, 409, 411, 412, 413, 414 |
| (Merchant Shipping Act, 1894)                              | 420  |
| (London Building Act, 1894)                                | 286, 287, 288  |
| (Documentary Evidence Act, 1895)                           | 413  |
| (Finance Act, 1895)  | 57   |
| (Summary Jurisdiction (Married Women) Act,<br>1895)        | 209  |
| 59 & 60 Vict. c. 15.                                       |  |
| c. 19.   |  |
| c. 20.   |  |
| c. 48.   |  |
| 60 & 61 Vict. c. 30.                                       |  |
| c. 31.   |  |
| c. 39.   |  |
| 61 & 62 Vict. c. 58.                                       |  |
| c. col.  |  |
| 62 & 63 Vict. c. 8.  |  |
| c. 14.   |  |
| c. 19.   |  |
| (Infectious Disease (Notification) Extension Act,<br>1899) | 391  |
| (London Government Act, 1899)                              | 50, 82, 236  |
| s. 2 (3) . . . . .   | 97   |
| s. 6 (4) . . . . .   | 317  |
| (Electric Lighting (Clauses) Act, 1899)                    | 270  |

|  | PAGE   |
|--|--|
| 62 & 63 Vict. c. 35.<br>c. 48.   | (Inebriates Act, 1899) . . . . . 119   |
| 63 & 64 Vict. c. 15.   | (Lincolnshire Coroners Act, 1899) . . . . . 62   |
| 1 Edw. 7, c. 8.<br>c. 22.  | (Burial Act, 1900) . . . . . 261   |
| 2 Edw. 7, c. 8.<br>c. 42.  | (Isolation Hospitals Act, 1901) . . . . . 34, 392  |
| 3 Edw. 7, c. 14.<br>c. 38.<br>c. 43.<br>c. 47.<br>c. clxxxvii.                         | (Factory and Workshop Act, 1901) . . . . . 148, 270, 346,<br>347, 357, 358, 420, 424   |
| 6 Edw. 7, c. 14.<br>c. 28.<br>c. 32.<br>c. 34.<br>c. 44.<br>c. clxxiv.                 | (Cremation Act, 1902) . . . . . 72, 254, 255, 256, 260, 261<br>(Education Act, 1902) . . . . . 149, 164, 216, 377<br>(Borough Funds Act, 1903) . . . . . 115, 157<br>(Poor Prisoners' Defence Act, 1903) . . . . . 121<br>(Diseases of Animals Act, 1903) . . . . . 394, 401<br>(Military Lands Act, 1903) . . . . . 175<br>(London County Council (General Powers) Act,<br>1903) . . . . . 414  |
| 7 Edw. 7, c. 4.<br><br>c. 9.<br><br>c. 17.<br>c. 23.<br>c. 27.<br><br>c. 40.<br>c. 53. | (Alkali, etc., Works Regulation Act, 1906) . . . . . 282<br>(Crown Lands Act, 1906) . . . . . 275<br>(Dogs Act, 1906) . . . . . 401<br>(Prevention of Corruption Act, 1906) . . . . . 98, 99, 100, 101<br>(Burial Act, 1906) . . . . . 27, 255, 261<br>(County Council of Middlesex (General Powers)<br>Act, 1906) . . . . . 239<br>(Destructive Insects and Pests Act, 1907) . . . . . 364, 365,<br>366, 370<br>(Territorial and Reserve Forces Act, 1907) . . . . . 195, 196,<br>197<br>(Probation of Offenders Act, 1907) . . . . . 123<br>(Criminal Appeal Act, 1907) . . . . . 118, 119<br>(Advertisements Regulation Act, 1907) . . . . . 34, 148,<br>149<br>(Notification of Births Act, 1907) . . . . . 292<br>(Public Health Acts Amendment Act, 1907) . . . . . 148,<br>278, 333, 416, 423 |
| 8 Edw. 7, c. 15.<br><br>c. 16.<br>c. 36.<br><br>c. 40.<br>c. 43.                       | s. 2 . . . . . 424<br>s. 7 . . . . . 334<br>s. 10 . . . . . 284<br>s. 12 . . . . . 270<br>s. 13 . . . . . 419, 425<br>s. 17 . . . . . 283<br>s. 28 . . . . . 283<br>s. 30 . . . . . 286<br>s. 47 . . . . . 284<br>s. 55 . . . . . 418, 425, 426<br>s. 56 . . . . . 284, 418, 426<br>s. 59 . . . . . 418<br>s. 61 . . . . . 419, 424<br>(3) . . . . . 424<br>s. 64 . . . . . 419<br>s. 66 . . . . . 284, 417, 425, 426, 427, 428<br>(4) . . . . . 417<br>(5) . . . . . 425<br>s. 68 . . . . . 86<br>s. 76 . . . . . 34<br>(1) . . . . . 35<br>(d) . . . . . 34  |
| 9 Edw. 7, c. 22.<br>c. 26.<br>c. 38.<br>c. 44.<br>c. 47.                               | (Costs in Criminal Cases Act, 1908) . . . . . 118, 119, 120,<br>121, 122, 123, 124, 125, 126<br>(Finance Act, 1908) . . . . . 136<br>(Small Holdings and Allotments Act, 1908) . . . . . 127,<br>132, 136, 168, 175<br>(Old Age Pensions Act, 1908) . . . . . 168<br>(Local Authorities (Admission of the Press to<br>Meetings) Act, 1908) . . . . . 309, 310<br>(Trade Boards Act, 1909) . . . . . 28<br>(Diseases of Animals Act, 1909) . . . . . 394, 403<br>(County Councils Mortgages Act, 1909) . . . . . 174<br>(Housing, Town Planning, etc., Act, 1909) . . . . . 168, 338<br>(Development and Road Improvement Funds Act,<br>1909) . . . . . 175, 237  |

|                               |   | PAGE                              |
|-------------------------------|---|-----------------------------------|
| 9 Edw. 7, c. cxxx.            | (London County Council (General Powers) Act, 1909)              | 317                               |
| 10 Edw. 7, c. 7.              | (Development and Road Improvement Funds Act, 1910)              | 237                               |
| c. 8.                         | (Finance (1909-10) Act, 1910)                                   | 56                                |
| 10 Edw. 7, & 1 Geo. 5, c. 13. | (Police (Weekly Rest-Day) Act, 1910)                            | 199, 205                          |
| c. 20.                        | (Diseases of Animals Act, 1910)                                 | 394, 400, 409                     |
| c. 24.                        | (Licensing (Consolidation) Act, 1910)                           | 70, 197                           |
| 1 & 2 Geo. 5, c. 6.           | (Perjury Act, 1911)   | 90                                |
| c. 7.                         | (Municipal Elections (Corrupt and Illegal Practices) Act, 1911) | 88, 89, 91, 92, 97                |
| c. 11.                        | (Poultry Act, 1911)   | 394, 401                          |
| c. 46.                        | (Copyright Act, 1911)   | 58, 59, 61                        |
| c. 50.                        | (Coal Mines Act, 1911)  | 347                               |
| 2 Geo. 5, c. 3.               | (Shops Act, 1912)   | 265                               |
| 2 & 3 Geo. 5, c. 19.          | (Light Railways Act, 1912)                                      | 175                               |
| 3 & 4 Geo. 5, c. 23.          | (Public Health (Prevention and Treatment of Disease) Act, 1913) | 392, 393, 423                     |
| c. 27.                        | (Forgery Act, 1913)   | 260                               |
| c. 28.                        | (Mental Deficiency Act, 1913)                                   | 153, 168, 268                     |
| c. 31.                        | (Industrial and Provident Societies (Amendment) Act, 1913)      | 129                               |
| c. 32.                        | (Ancient Monuments Consolidation and Amendment Act, 1913)       | 41, 82                            |
| 4 & 5 Geo. 5, c. 6.           | (Affiliation Orders Act, 1914)                                  | 209                               |
| c. 15.                        | (Exportation of Horses Act, 1914)                               | 394, 409                          |
| c. 17.                        | (British Nationality and Status of Aliens Act, 1914)            | 178                               |
| c. 21.                        | (County and Borough Councils (Qualification) Act, 1914)         | 186                               |
| c. 58.                        | (Criminal Justice Administration Act, 1914)                     | 118, 209, 413                     |
| c. 61.                        | (Special Constables Act, 1914)                                  | 211                               |
| c. iii.                       | (East Ham Corporation Act, 1914)                                | 158                               |
| 5 & 6 Geo. 5, c. 64.          | (Notification of Births (Extension) Act, 1915)                  | 292                               |
| c. 66.                        | (Milk and Dairies (Consolidation) Act, 1915)                    | 170, 251, 316, 317                |
| c. 90.                        | (Indictments Act, 1915)   | 119                               |
| 6 & 7 Geo. 5, c. 64.          | (Prevention of Corruption Act, 1916)                            | 98, 99, 100                       |
| 7 & 8 Geo. 5, c. 64.          | (Representation of the People Act, 1918)                        | 88, 178, 179, 186, 193, 197, 217  |
| 8 & 9 Geo. 5, c. 29.          | (Maternity and Child Welfare Act, 1918)                         | 135, 168, 292, 293                |
| c. 39.                        | (Education Act, 1918)—  |                                   |
|                               | s. 3 . . . . .  | 9                                 |
|                               | s. 10 . . . . .   | 11                                |
| c. 40.                        | (Income Tax Act, 1918)  | 244                               |
| 9 Geo. 5, c. 13.              | (Local Elections (Expenses) Act, 1919)                          | 93                                |
| 9 & 10 Geo. 5, c. 35.         | (Housing, Town Planning, etc., Act, 1919)                       | 39, 112, 146                      |
| c. 46.                        | (Police Act, 1919)  | 199, 203, 206, 211                |
| c. 50.                        | (Ministry of Transport Act, 1919)                               | 166, 237, 238, 324, 335           |
| c. 57.                        | (Acquisition of Land (Assessment of Compensation) Act, 1919)    | 132, 133, 282, 283, 288           |
| c. 58.                        | (Forestry Act, 1919)  | 2, 366                            |
| c. 59.                        | (Land Settlement (Facilities) Act, 1919)                        | 136                               |
| c. 71.                        | (Sex Disqualification (Removal) Act, 1919)                      | 318                               |
| c. 72.                        | (Rats and Mice ( Destruction) Act, 1919)                        | 170, 422                          |
| c. 84.                        | (County and Borough Police Act, 1919)                           | 199, 204, 207                     |
| c. 91.                        | (Ministry of Agriculture and Fisheries Act, 1919)               | 168, 170, 365, 367, 395, 396, 397 |
| c. 93.                        | (Public Libraries Act, 1919)                                    | 175                               |
| c. 99.                        | (Housing (Additional Powers) Act, 1919)                         | 112                               |
| 10 & 11 Geo. 5, c. 19.        | (County Councils Association Expenses (Amendment) Act, 1920)    | 187                               |
| c. 28.                        | (Gas Regulation Act, 1920)                                      | 132                               |

|                        |   | PAGE                  |
|------------------------|---|-----------------------|
| 10 & 11 Geo. 5, c. 30. | (Unemployment Insurance Act, 1920)  | 321                   |
| c. 49.                 | (Blind Persons Act, 1920) . . . . .   | 181, 383              |
| c. 50.                 | (Mining Industry Act, 1920) . . . . .   | 347                   |
| c. 62.                 | (Women and Young Persons (Employment in<br>Lead Processes) Act, 1920) . . . . . | 346, 357              |
| c. 63.                 | (Married Women (Maintenance) Act, 1920) . . . . .                               | 209                   |
| c. 72.                 | (Roads Act, 1920) . . . . .   | 271                   |
| c. 80.                 | (Air Navigation Act, 1920) . . . . .  | 175                   |
| 11 & 12 Geo. 5, c. 12. | (Public Health (Tuberculosis) Act, 1921) . . . . .                              | 39, 393               |
| c. 31.                 | (Police Pensions Act, 1921) . . . . .   | 199, 201, 210         |
| c. 51.                 | (Education Act, 1921) . . . . .   | 164, 176, 377         |
|                        | s. 3 . . . . .  | 154                   |
|                        | s. 4 . . . . .  | 26, 168, 170          |
|                        | (2) . . . . .   | 49                    |
|                        | (b) . . . . .   | 379                   |
|                        | s. 5 . . . . .  | 384                   |
|                        | s. 9 . . . . .  | 182                   |
|                        | s. 75 . . . . .   | 9                     |
|                        | s. 76 . . . . .   | 10, 11                |
|                        | (1)—(4) . . . . .   | 10                    |
|                        | s. 77 . . . . .   | 11                    |
|                        | (1) . . . . .   | 10                    |
|                        | (2) . . . . .   | 10                    |
|                        | (4) . . . . .   | 10                    |
|                        | s. 78 (1) . . . . .   | 10                    |
|                        | (2) . . . . .   | 11                    |
|                        | s. 79 (1) . . . . .   | 11                    |
|                        | s. 87 . . . . .   | 422                   |
|                        | s. 93 . . . . .   | 11                    |
|                        | s. 117 (2) . . . . .  | 57                    |
|                        | s. 126 . . . . .  | 185, 188              |
|                        | s. 145 . . . . .  | 384                   |
|                        | s. 148 . . . . .  | 166, 378, 379, 380    |
|                        | (1) . . . . .   | 380                   |
|                        | (3) . . . . .   | 378                   |
|                        | s. 150 . . . . .  | 315                   |
|                        | s. 151 . . . . .  | 315                   |
|                        | s. 170 (13) . . . . .   | 9                     |
|                        | (14) . . . . .  | 9                     |
|                        | s. 172 (e) . . . . .  | 384                   |
|                        | s. 173 (3) . . . . .  | 10                    |
|                        | Sched. II. . . . .  | 384                   |
| c. 55.                 | (Railways Act, 1921) . . . . .  | 360, 361              |
| c. xl.                 | (Middlesex County Council (General Powers) Act,<br>1921) . . . . .              | 239                   |
| 12 & 13 Geo. 5, c. 16. | (Law of Property Act, 1922) . . . . .   | 178                   |
| c. 22.                 | (Summer Time Act, 1922) . . . . .   | 319                   |
| c. 44.                 | (British Nationality and Status of Aliens Act,<br>1922) . . . . .               | 178                   |
| c. 51.                 | (Allotments Act, 1922) . . . . .  | 49, 344               |
| c. 54.                 | (Milk and Dairies (Amendment) Act, 1922) . . . . .                              | 316                   |
| c. 59.                 | (Local Government and other Officers' Super-<br>annuation Act, 1922) . . . . .  | 171, 239              |
| c. lxii.               | (London County Council (General Powers) Act,<br>1922) . . . . .                 | 317                   |
| 13 Geo. 5, c. 5.       | (Importation of Animals Act, 1922) (Session 2) . . . . .                        | 394,<br>400, 407, 408 |
| 13 & 14 Geo. 5, c. 9.  | (Agricultural Holdings Act, 1923) . . . . .                                     | 128, 343              |
| c. 11.                 | (Special Constables Act, 1923) . . . . .  | 211                   |
| c. 16.                 | (Salmon and Freshwater Fisheries Act, 1923) . . . . .                           | 197                   |
| c. 24.                 | (Housing, etc. Act, 1923) . . . . .   | 39, 112, 146          |
| c. 38.                 | (Education (Institution Children) Act, 1923) . . . . .                          | 37                    |
| 14 & 15 Geo. 5, c. 34. | (London Traffic Act, 1924) . . . . .  | 270                   |
| c. 35.                 | (Housing (Financial Provisions) Act, 1924) . . . . .                            | 39, 112,<br>146       |
| 15 Geo. 5, c. 14.      | (Housing Act, 1925) . . . . .   | 154, 165, 315         |
|                        | s. 6 . . . . .  | 420, 424              |
|                        | s. 70 . . . . .   | 36                    |

## TABLE OF STATUTES

xxiii

| 15 Geo. 5, c. 14.      | (Housing Act, 1925)—continued.                                    | PAGE  |
|------------------------|---|---|
| c. 16.                 | s. 107 . . . . .  | 38  |
| c. 18.                 | s. 111 (1) . . . . .  | 49  |
| c. 20.                 | (Town Planning Act, 1925) . . . . .                               | 41, 338   |
| c. 21.                 | (Settled Land Act, 1925) . . . . .                                | 297   |
| c. 22.                 | (Law of Property Act, 1925) . . . . .                             | 13, 14, 48, 50, 52,<br>54, 55, 56, 57, 127, 178 |
| c. 24.                 | (Land Registration Act, 1925) . . . . .                           | 53, 129   |
| 15 & 16 Geo. 5, c. 30. | (Land Charges Act, 1925) . . . . .                                | 53, 57, 271                                     |
| c. 49.                 | (Universities and College Estates Act, 1925) . . . . .            | 297   |
| c. 52.                 | (Importation of Pedigree Animals Act, 1925) . . . . .             | 394,<br>408                                     |
| c. 59.                 | (Supreme Court of Judicature (Consolidation) Act, 1925) . . . . . | 196   |
| c. 63.                 | (Advertisements Regulation Act, 1925) . . . . .                   | 34  |
| c. 64.                 | (Teachers (Superannuation) Act, 1925) . . . . .                   | 380   |
| c. 68.                 | (Diseases of Animals Act, 1925) . . . . .                         | 394, 399  |
| c. 71.                 | (Summer Time Act, 1925) . . . . .                                 | 319   |
|                        | (Roads Improvement Act, 1925) . . . . .                           | 283   |
|                        | (Public Health Act, 1925) . . . . .                               | 148, 333, 423                                   |
|                        | s. 1 (3) . . . . .  | 278   |
|                        | s. 3 . . . . .  | 421   |
|                        | s. 4 . . . . .  | 421   |
|                        | (2) . . . . .   | 421   |
|                        | s. 7 . . . . .  | 270, 334  |
|                        | s. 10 . . . . .   | 270   |
|                        | s. 24 . . . . .   | 282   |
|                        | s. 31 . . . . .   | 240, 334  |
|                        | s. 33 . . . . .   | 33, 283   |
|                        | s. 34 (2) . . . . .   | 33  |
|                        | s. 45 . . . . .   | 284, 421, 425, 426, 428                         |
|                        | s. 46 . . . . .   | 421, 425, 426, 427                              |
|                        | (3) . . . . .   | 421   |
|                        | s. 47 . . . . .   | 428   |
|                        | s. 48 . . . . .   | 422   |
|                        | (8) . . . . .   | 422   |
|                        | s. 49 . . . . .   | 421   |
|                        | s. 50 . . . . .   | 421, 424  |
|                        | s. 55 . . . . .   | 35  |
|                        | s. 56 . . . . .   | 34  |
|                        | s. 57 . . . . .   | 86  |
|                        | s. 59 . . . . .   | 284   |
|                        | s. 60 . . . . .   | 86, 416   |
|                        | s. 61 . . . . .   | 393   |
|                        | s. 64 . . . . .   | 34, 390   |
|                        | s. 66 . . . . .   | 390   |
|                        | s. 67 . . . . .   | 393   |
|                        | s. 69 . . . . .   | 35  |
|                        | (2) . . . . .   | 51  |
|                        | s. 81 . . . . .   | 35  |
| c. 85.                 | (Land Settlement (Facilities) Amendment Act, 1925) . . . . .      | 136   |
| c. 86.                 | (Criminal Justice Act, 1925) . . . . .                            | 71, 121, 123, 126,<br>265, 266                  |
| c. 90.                 | (Rating and Valuation Act, 1925) . . . . .                        | 171, 212, 217,<br>273, 372                      |
|                        | s. 1 . . . . .  | 151, 190  |
|                        | (1) . . . . .   | 149, 386  |
|                        | s. 2 . . . . .  | 373   |
|                        | s. 3 (2) . . . . .  | 374, 386  |
|                        | s. 8 . . . . .  | 386   |
|                        | s. 9 . . . . .  | 174   |
|                        | s. 10 . . . . .   | 120   |
|                        | s. 11 . . . . .   | 386, 388  |
|                        | s. 16 . . . . .   | 151, 190  |
|                        | (2) . . . . .   | 242   |
|                        | (3) . . . . .   | 151   |
|                        | (8) . . . . .   | 227, 242  |

|                        | PAGE   |
|------------------------|--|
| 15 & 16 Geo. 5, c. 90. | (Rating and Valuation Act, 1925)— <i>continued.</i>  |
|                        | s. 17 (4) . . . . .      242   |
|                        | s. 18 . . . . .      168, 241, 246   |
|                        | (1) . . . . .      246   |
|                        | (2) . . . . .      241, 244, 245, 246, 248   |
|                        | (3) . . . . .      242, 243  |
|                        | (4) . . . . .      241, 242  |
|                        | s. 22 (1) (c) . . . . .      363, 373  |
|                        | s. 24 . . . . .      355, 363  |
|                        | s. 26 . . . . .      246   |
|                        | (1) . . . . .      243, 249  |
|                        | s. 27 (1) . . . . .      243   |
|                        | s. 31 . . . . .      246   |
|                        | (1) . . . . .      243   |
|                        | (5) . . . . .      244   |
|                        | (6) . . . . .      243   |
|                        | (9) . . . . .      244, 248  |
|                        | (10) . . . . .      244  |
|                        | s. 33 . . . . .      243, 244  |
|                        | s. 37 . . . . .      246, 362  |
|                        | (1) . . . . .      244, 249  |
|                        | (7) . . . . .      244   |
|                        | s. 38 . . . . .      247   |
|                        | (1) . . . . .      242, 247  |
|                        | s. 39 . . . . .      247   |
|                        | s. 40 (6) . . . . .      244, 245, 246, 249  |
|                        | s. 43 (3) . . . . .      244   |
|                        | s. 53 (2) . . . . .      242   |
|                        | s. 55 (1) . . . . .      242, 247  |
|                        | s. 57 (1) . . . . .      246   |
|                        | (3) . . . . .      246   |
|                        | s. 61 . . . . .      375   |
|                        | s. 64 . . . . .      363, 374  |
|                        | (1) . . . . .      374, 375  |
|                        | (2) (a)—(c) . . . . .      375   |
|                        | (3) (b) . . . . .      274   |
|                        | s. 68 . . . . .      190, 374  |
|                        | Sched. II. . . . .      373, 375   |
|                        | Sched. IV. . . . .      243, 248   |
|                        | Sched. VII. . . . .      375   |
| c. exxi.               | (Bradford Corporation Act, 1925) . . . . .      392  |
| No. 1.                 | (Interpretation Measure, 1925) . . . . .      320  |
| 16 & 17 Geo. 5, c. 13. | (Criminal Justice (Amendment) Act, 1926) . . . . .      123  |
| c. 29.                 | (Adoption of Children Act, 1926) . . . . .      383  |
| c. 34.                 | (Police Pensions Act, 1926) . . . . .      190, 201, 210   |
| c. 38.                 | (Local Government (County Boroughs and Adjustments) Act, 1926) . . . . .      157, 158, 159, 217                               |
| c. 43.                 | (Public Health (Smoke Abatement) Act, 1926) . . . . .      36, 170, 270, 313   |
| c. 45.                 | (Fertilisers and Feeding Stuffs Act, 1926) . . . . .      166  |
| c. 48.                 | (Births and Deaths Registration Act, 1926) . . . . .      68, 154, 256, 257  |
| c. 52.                 | (Small Holdings and Allotments Act, 1926) . . . . .      53, 127, 128, 129, 132, 136   |
| c. 59.                 | (Coroners (Amendment) Act, 1926) . . . . .      62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 227, 257, 259, 261 |
| c. xxvii.              | (Doncaster Corporation Act, 1926) . . . . .      158   |
| 17 Geo. 5, c. 4.       | (Royal and Parliamentary Titles Act, 1927) . . . . .      181, 320   |
| 17 & 18 Geo. 5, c. 13. | (Diseases of Animals Act, 1927) . . . . .      205, 394, 400, 411, 412, 414  |
| c. 14.                 | (Poor Law Act, 1927) . . . . .      186  |
| c. 19.                 | (Police (Appeals) Act, 1927) . . . . .      199, 200, 203, 204, 205  |
| c. 22.                 | (Trade Disputes and Trade Unions Act, 1927) . . . . .      27, 28  |
| c. 23.                 | (Crown Lands Act, 1927) . . . . .      274   |
| c. 30.                 | (Unemployment Insurance Act, 1927) . . . . .      321  |
| c. 31.                 | (Audit (Local Authorities) Act, 1927) . . . . .      186   |

|                        |  | PAGE                            |
|------------------------|--|---------------------------------|
| 17 & 18 Geo. 5, c. 32. | (Destructive Insects and Pests Act, 1927)                  | 364, 365,<br>366, 370, 397      |
| c. 33.                 | (Mental Deficiency Act, 1927)                              | 268                             |
| c. 37.                 | (Road Transport Lighting Act, 1927)                        | 271                             |
| 18 & 19 Geo. 5, c. 12. | (Representation of the People (Equal Franchise) Act, 1928) | 217                             |
| c. 31.                 | (Food and Drugs (Adulteration) Act, 1928)                  | 166, 251,<br>252, 264, 316      |
| c. 32.                 | (Petroleum (Consolidation) Act, 1928)                      | 153                             |
| c. 44.                 | (Rating and Valuation (Apportionment) Act, 1928)           | 343                             |
|                        | s. 1 . . . . .   | 362, 363                        |
|                        | (1) . . . . .  | 343, 345                        |
|                        | s. 2 (1) . . . . .   | 343                             |
|                        | (2) . . . . .  | 344, 345                        |
|                        | s. 3 . . . . .   | 349, 374                        |
|                        | (1) . . . . .  | 345, 348, 349, 352              |
|                        | (a) . . . . .  | 351                             |
|                        | (b) . . . . .  | 351                             |
|                        | (c) . . . . .  | 353                             |
|                        | (d) . . . . .  | 354                             |
|                        | (f) . . . . .  | 356, 357                        |
|                        | (2) . . . . .  | 346, 348, 350, 356, 357         |
|                        | (3) . . . . .  | 347, 348, 349, 357              |
|                        | (4) . . . . .  | 347, 348, 351, 355              |
|                        | s. 4 . . . . .   | 345, 348, 349, 350, 374         |
|                        | (2) (a) . . . . .  | 348                             |
|                        | (b) . . . . .  | 348, 357                        |
|                        | (c) . . . . .  | 348, 349                        |
|                        | s. 5 . . . . .   | 348                             |
|                        | (1) . . . . .  | 360, 362                        |
|                        | (a) . . . . .  | 360                             |
|                        | (b) . . . . .  | 361                             |
|                        | (c) . . . . .  | 361                             |
|                        | (2) (a)—(c) . . . . .                                      | 361                             |
|                        | (3) . . . . .  | 361                             |
|                        | s. 6 . . . . .   | 362                             |
|                        | (2) . . . . .  | 362                             |
|                        | (3) . . . . .  | 362                             |
|                        | (a) . . . . .  | 362                             |
|                        | (b) . . . . .  | 362                             |
|                        | s. 7 . . . . .   | 364                             |
| c. lxxii.              | (Middlesex and Surrey (Thames Bridges, etc.) Act, 1928)    | 239                             |
| c. lxxvii.             | (London County Council (General Powers) Act, 1928)         | 87                              |
| 19 Geo. 5, c. 17.      | (Local Government Act, 1929)                               | 143, 216, 293, 324, 342,<br>343 |
|                        | s. 1 . . . . .   | 149, 154                        |
|                        | s. 10 . . . . .  | 186                             |
|                        | s. 13 . . . . .  | 154                             |
|                        | s. 14 . . . . .  | 154                             |
|                        | (1) . . . . .  | 34, 393                         |
|                        | s. 21 . . . . .  | 154                             |
|                        | s. 24 . . . . .  | 154                             |
|                        | s. 29 . . . . .  | 237, 325, 336                   |
|                        | (1) . . . . .  | 329                             |
|                        | (2) . . . . .  | 332                             |
|                        | s. 30 . . . . .  | 164, 314, 325, 335, 336         |
|                        | (1) . . . . .  | 325, 332                        |
|                        | (2) . . . . .  | 34, 326, 334                    |
|                        | (3) . . . . .  | 326                             |
|                        | (4) . . . . .  | 325                             |
|                        | s. 31 . . . . .  | 164, 325, 328, 336              |
|                        | (5) . . . . .  | 34, 326                         |
|                        | (6) . . . . .  | 33, 328, 329                    |
|                        | s. 32 . . . . .  | 325, 327, 328, 336              |
|                        | (3) (a) . . . . .  | 326                             |

19 Geo. 5, c. 17.

PAGE

|   |  |                         |
|---|--|-------------------------|
| (Local Government Act, 1929)— <i>continued.</i> |  |                         |
| s. 33 . . . . .                                 |  | 33, 239, 336            |
| s. 34 . . . . .                                 |  | 336                     |
| s. 35 . . . . .                                 | 170, 314, 328, 329, 333, 334, 335, 336                             |                         |
| (1) . . . . .                                   |  | 326, 327                |
| (2) . . . . .                                   |  | 327, 329, 330           |
| (3) . . . . .                                   |  | 327                     |
| (4) . . . . .                                   |  | 327                     |
| (5) . . . . .                                   |  | 327, 336                |
| (6)—(8) . . . . .                               |  | 327, 333, 336           |
| s. 36 . . . . .                                 | 170, 239, 328, 330, 331, 336                                       |                         |
| (1) . . . . .                                   |  | 314, 330                |
| (2) . . . . .                                   |  | 35, 334                 |
| (a) . . . . .                                   |  | 333                     |
| (b) . . . . .                                   |  | 333                     |
| (c) . . . . .                                   |  | 335                     |
| s. 37 . . . . .                                 |  | 328, 329, 336           |
| (1) . . . . .                                   |  | 328, 329                |
| (2) . . . . .                                   |  | 329                     |
| (3) . . . . .                                   |  | 329                     |
| s. 38 . . . . .                                 |  | 336                     |
| s. 39 . . . . .                                 |  | 283, 336                |
| (2) . . . . .                                   |  | 283                     |
| s. 45 . . . . .                                 |  | 336                     |
| s. 46 . . . . .                                 | 160, 192, 214, 215, 217, 218, 219, 226, 227,<br>233, 235, 336, 376 |                         |
| (1) (a)—(e) . . . . .                           |  | 219                     |
| (2) . . . . .                                   |  | 219                     |
| (3) . . . . .                                   |  | 219, 230                |
| (4) . . . . .                                   |  | 226, 231                |
| (5) . . . . .                                   |  | 230, 232, 233           |
| (6) . . . . .                                   |  | 214                     |
| (7) . . . . .                                   |  | 220                     |
| (8) . . . . .                                   |  | 215                     |
| s. 47 . . . . .                                 |  | 214, 217, 218, 219      |
| (1) . . . . .                                   |  | 219, 220                |
| (2) . . . . .                                   |  | 220                     |
| s. 50 . . . . .                                 |  | 164, 191, 192           |
| (1) . . . . .                                   |  | 193                     |
| (2) . . . . .                                   |  | 193                     |
| s. 56 (1) . . . . .                             |  | 33                      |
| s. 57 . . . . .                                 |  | 31, 234                 |
| (2) . . . . .                                   |  | 393, 423                |
| (3) . . . . .                                   |  | 170, 312, 313, 314, 423 |
| s. 61 . . . . .                                 |  | 292                     |
| s. 63 . . . . .                                 |  | 154, 393                |
| s. 66 . . . . .                                 |  | 376                     |
| (2) . . . . .                                   |  | 192                     |
| (3) . . . . .                                   |  | 219, 235                |
| s. 67 . . . . .                                 |  | 344, 363                |
| s. 68 . . . . .                                 |  | 360, 363, 374           |
| (1) . . . . .                                   |  | 345, 363, 374           |
| (a) . . . . .                                   |  | 363                     |
| s. 69 . . . . .                                 |  | 346                     |
| s. 70 . . . . .                                 |  | 362                     |
| (1) . . . . .                                   |  | 364                     |
| (4) . . . . .                                   |  | 362, 364                |
| s. 72 . . . . .                                 |  | 363                     |
| s. 73 . . . . .                                 |  | 363                     |
| s. 76 . . . . .                                 |  | 375                     |
| s. 84 . . . . .                                 |  | 364                     |
| s. 85 . . . . .                                 |  | 39, 212                 |
| (1) . . . . .                                   |  | 268                     |
| ss. 86—88 . . . . .                             |  | 152                     |
| s. 91 . . . . .                                 |  | 328                     |
| s. 94 . . . . .                                 |  | 225, 234                |
| s. 96 . . . . .                                 |  | 152                     |
| s. 97 . . . . .                                 |  | 152                     |

| 19 Geo. 5, c. 17.      |   | (Local Government Act, 1929)—continued. | PAGE  |          |
|------------------------|---|---|---|----------|
|                        | s. 101 . . . . .  | . . . . .                               | 36  |          |
|                        | (6) . . . . .   | . . . . .                               | 40  |          |
|                        | s. 102 (1) . . . . .  | . . . . .                               | 36, 40  |          |
|                        | s. 113 . . . . .  | . . . . .                               | 269   |          |
|                        | s. 120 . . . . .  | . . . . .                               | 335   |          |
|                        | s. 131 . . . . .  | . . . . .                               | 227   |          |
|                        | s. 134 . . . . .  | . . . . .                               | 149, 326, 335   |          |
|                        | s. 136 . . . . .  | . . . . .                               | 348, 363  |          |
|                        | s. 137 . . . . .  | . . . . .                               | 399   |          |
|                        | Sched. I. . . . .   | . . . . .                               | 34, 240, 326, 331, 333, 334   |          |
|                        | Sched. II. . . . .  | . . . . .                               | 268   |          |
|                        | Sched. X. . . . .   | . . . . .                               | 268   |          |
|                        | Sched. XI. . . . .  | . . . . .                               | 348, 363  |          |
|                        | Sched. XII. . . . .   | . . . . .                               | 212   |          |
| 19 & 20 Geo. 5, c. 23. | (Companies Act, 1929) . . . . .   | . . . . .                               | 23, 24, 167, 182  |          |
| c. 32.                 | (Artificial Cream Act, 1929) . . . . .  | . . . . .                               | 251, 252  |          |
| 20 Geo. 5, c. 17.      | (Poor Law Act, 1930) . . . . .  | . . . . .                               | 29, 36, 49, 84, 85, 151,<br>154, 166, 168, 170, 181, 185, 190, 227, 267, 268, 390 |          |
| 20 & 21 Geo. 5, c. 23. | (Mental Treatment Act, 1930) . . . . .  | . . . . .                               | 153, 168, 175, 267,<br>269  |          |
| c. 24.                 | (Railways (Valuation for Rating) Act, 1930) . . . . .   | . . . . .                               | 38, 187   |          |
| c. 32.                 | (Poor Prisoners' Defence Act, 1930) . . . . .   | . . . . .                               | 121, 122, 123   |          |
| c. 39.                 | (Housing Act, 1930) . . . . .   | . . . . .                               | 39, 40, 112, 146, 154, 176<br>s. 8 (3) . . . . .                                  | 420, 424 |
|                        | s. 22 . . . . .   | . . . . .                               | 338   |          |
|                        | s. 35 . . . . .   | . . . . .                               | 170, 315  |          |
|                        | s. 36 . . . . .   | . . . . .                               | 315   |          |
|                        | s. 52 . . . . .   | . . . . .                               | 170, 315  |          |
|                        | s. 53 . . . . .   | . . . . .                               | 170, 315  |          |
|                        | s. 54 . . . . .   | . . . . .                               | 315   |          |
| c. 43.                 | (Road Traffic Act, 1930) . . . . .  | . . . . .                               | 154, 174, 213, 271  |          |
| c. 44.                 | (Land Drainage Act, 1930) . . . . .   | . . . . .                               | 2, 35, 39, 154, 173,<br>189, 273  |          |
| c. cxv.                | (Epsom Rural District Council Act, 1930) . . . . .  | . . . . .                               | 41  |          |
| c. clviii.             | (London Building Act, 1930) . . . . .   | . . . . .                               | 44, 45, 272, 286,<br>288, 289, 290, 291, 340                                      |          |
| c. clxvi.              | (Middlesex County Council Act, 1930) . . . . .  | . . . . .                               | 239   |          |
| 21 Geo. 5, c. 6.       | (Education (Local Authorities) Act, 1931) . . . . .   | . . . . .                               | 154   |          |
| 21 & 22 Geo. 5, c. 16. | (Ancient Monuments Act, 1931) . . . . .   | . . . . .                               | 82  |          |
| c. 17.                 | (Local Authorities (Publicity) Act, 1931) . . . . .   | . . . . .                               | 36  |          |
| c. 28.                 | (Finance Act, 1931) . . . . .   | . . . . .                               | 57  |          |
| c. 41.                 | (Agricultural Land (Utilisation) Act, 1931) . . . . .   | . . . . .                               | 126, 127,<br>128, 129   |          |
|                        | (Small Holdings and Allotments Act, 1931) [Part II. of Agricultural Land (Utilisation) Act, 1931] . . . . . | . . . . .                               | 175   |          |
|                        | (Allotments Act, 1931) [Part II. of Agricultural Land (Utilisation) Act, 1931] . . . . .                    | . . . . .                               | 175   |          |
| c. 43.                 | (Improvement of Live Stock (Licensing of Bulls) Act, 1931) . . . . .  | . . . . .                               | 408   |          |
| c. 45.                 | (Local Government (Clerks) Act, 1931) . . . . .   | . . . . .                               | 165, 277  |          |
| c. ix.                 | (West Ham Corporation Act, 1931) . . . . .  | . . . . .                               | 52  |          |
| c. ci.                 | (Surrey County Council Act, 1931) . . . . .   | . . . . .                               | 41, 42, 239   |          |
| c. cii.                | (Taunton Corporation Act, 1931) . . . . .   | . . . . .                               | 41, 338   |          |
| 22 & 23 Geo. 5, c. 28. | (Public Health (Cleansing of Shell-fish) Act, 1932) . . . . .   | . . . . .                               | 154   |          |
| c. 37.                 | (Solicitors Act, 1932) . . . . .  | . . . . .                               | 119, 265  |          |
| c. 45.                 | (Rights of Way Act, 1932) . . . . .   | . . . . .                               | 295, 298, 299, 300<br>302   |          |
| c. 48.                 | (Town and Country Planning Act, 1932) . . . . .   | . . . . .                               | 38, 41, 176,<br>336, 339  |          |
|                        | s. 2 . . . . .  | . . . . .                               | 154, 341  |          |
|                        | (1) . . . . .   | . . . . .                               | 45, 149   |          |
|                        | s. 3 (1) . . . . .  | . . . . .                               | 154   |          |
|                        | s. 11 . . . . .   | . . . . .                               | 42, 338   |          |
|                        | (3) . . . . .   | . . . . .                               | 43  |          |
|                        | s. 12 (1) . . . . .   | . . . . .                               | 338   |          |
|                        | (c) . . . . .   | . . . . .                               | 42  |          |

|                        | PAGE   |                           |
|------------------------|--|---------------------------|
| 22 & 23 Geo. 5, c. 48. | (Town and Country Planning Act, 1932)— <i>continued.</i>                   |                           |
|                        | 43   |                           |
|                        | s. 13 . . . . .  | 43                        |
|                        | s. 19 . . . . .  | 43, 278, 338              |
|                        | ss. 28—31 . . . . .  | 32                        |
|                        | s. 34 . . . . .  | 54                        |
|                        | s. 36 . . . . .  | 315                       |
|                        | s. 39 . . . . .  | 42                        |
|                        | s. 43 . . . . .  | 271                       |
|                        | s. 50 . . . . .  | 45                        |
|                        | s. 53 . . . . .  | 149                       |
|                        | Sched. II. . . . .   | 42, 338                   |
|                        | Sched. IV. . . . .   | 43                        |
| c. 53.                 | (Ottawa Agreements Act, 1932) . . . . .                                    | 407, 408                  |
| 23 Geo. 5, c. 12.      | (Children and Young Persons Act, 1933) . . . . .                           | 153, 383                  |
|                        | s. 55. . . . .   | 123                       |
| 23 & 24 Geo. 5, c. 15. | (Housing (Financial Provisions) Act, 1933) . . . . .                       | 43                        |
| c. 29.                 | (Education (Necessity of Schools) Act, 1933) . . . . .                     | 176                       |
| c. 36.                 | (Administration of Justice (Miscellaneous Provisions) Act, 1933) . . . . . | 100, 118, 124, 266        |
| c. 38.                 | (Summary Jurisdiction (Appeals) Act, 1933) . . . . .                       | 125,                      |
|                        |  | 126, 260                  |
| c. 46.                 | (Electricity (Supply) Act, 1933) . . . . .                                 | 175                       |
| c. 51.                 | (Local Government Act, 1933) . . . . .                                     | 96, 114, 196, 236,<br>241 |
|                        | s. 1 . . . . .   | 162, 189                  |
|                        | (2) (d) . . . . .  | 189                       |
|                        | (3) . . . . .  | 149                       |
|                        | . 2 . . . . .  | 163                       |
|                        | (1) . . . . .  | 238                       |
|                        | (2) . . . . .  | 48, 50, 163, 262          |
|                        | s. 3 (1) . . . . .   | 163                       |
|                        | (2) . . . . .  | 171                       |
|                        | (3) . . . . .  | 23                        |
|                        | s. 4 . . . . .   | 171                       |
|                        | s. 5 . . . . .   | 171                       |
|                        | (1) . . . . .  | 163                       |
|                        | (3) . . . . .  | 171                       |
|                        | s. 6 (1)—(3) . . . . .   | 163                       |
|                        | s. 7 . . . . .   | 171                       |
|                        | (2) . . . . .  | 163                       |
|                        | s. 8 . . . . .   | 179                       |
|                        | s. 10 . . . . .  | 164, 179, 191             |
|                        | s. 11 . . . . .  | 164, 191, 192, 227        |
|                        | (1)—(4) . . . . .  | 191                       |
|                        | (5) . . . . .  | 192                       |
|                        | (6) . . . . .  | 192                       |
|                        | s. 12 . . . . .  | 179                       |
|                        | (2) . . . . .  | 179                       |
|                        | s. 13 . . . . .  | 179, 193                  |
|                        | s. 15 . . . . .  | 179                       |
|                        | s. 16 . . . . .  | 93                        |
|                        | s. 17 . . . . .  | 2, 12, 149, 150, 189      |
|                        | (1) . . . . .  | 50, 150, 254, 262         |
|                        | (2) . . . . .  | 150, 262                  |
|                        | (3) . . . . .  | 48, 155                   |
|                        | s. 18 . . . . .  | 149                       |
|                        | (3) . . . . .  | 23                        |
|                        | (8) . . . . .  | 150                       |
|                        | ss. 19—21 . . . . .  | 149                       |
|                        | s. 22 . . . . .  | 149, 197                  |
|                        | ss. 23—30 . . . . .  | 149                       |
|                        | s. 31 . . . . .  | 189                       |
|                        | (2) . . . . .  | 48, 50, 262               |
|                        | s. 32 . . . . .  | 189                       |
|                        | (2) . . . . .  | 48, 50, 262               |
|                        | s. 33 (4) . . . . .  | 23                        |
|                        | s. 40 (2) . . . . .  | 89, 93                    |
|                        | s. 43 . . . . .  | 310                       |

| 23 & 24 Geo. 5, c. 51. | (Local Government Act, 1933)— <i>continued.</i> | PAGE                                 |
|------------------------|---|--------------------------------------|
| s. 47 (2)              | .   | 13, 14                               |
| (3)                    | .   | 48, 50, 262                          |
| (4)                    | .   | 48                                   |
| s. 48 (2)              | .   | 48, 50, 262                          |
| (3)                    | .   | 13, 14, 48                           |
| s. 54 (2)              | .   | 89, 93                               |
| s. 57                  | .   | 150, 178                             |
| (b)                    | .   | 178                                  |
| s. 58                  | .   | 150, 178, 186                        |
| s. 59                  | .   | 150, 180                             |
| (1)                    | .   | 181                                  |
| (a)                    | .   | 198                                  |
| (h)                    | .   | 150                                  |
| (i)                    | .   | 181                                  |
| (iv)                   | .   | 181                                  |
| (v)                    | .   | 181                                  |
| (2)                    | .   | 181                                  |
| (4)                    | .   | 64, 181                              |
| (5)                    | .   | 181                                  |
| s. 61                  | .   | 150, 171, 180, 186                   |
| s. 62                  | .   | 150, 180, 186                        |
| s. 63                  | .   | 150, 180, 186                        |
| (1) (b)                | .   | 180                                  |
| (c)                    | .   | 180                                  |
| s. 64                  | .   | 150, 180, 182                        |
| s. 65                  | .   | 150, 179, 182                        |
| s. 66                  | .   | 150                                  |
| s. 67                  | .   | 150, 179                             |
| s. 68                  | .   | 150, 180                             |
| ss. 69—74              | .   | 150                                  |
| s. 75                  | .   | 150, 182, 184, 186                   |
| s. 76                  | .   | 24, 25, 102, 150, 182, 183, 184, 186 |
| (1)                    | .   | 23, 25, 101, 182, 183                |
| (2)                    | .   | 25, 101, 102, 167, 183               |
| (a)                    | .   | 23                                   |
| (b)                    | .   | 24                                   |
| (i)                    | .   | 24                                   |
| (ii)                   | .   | 24                                   |
| (3)                    | .   | 24, 25, 102, 167, 183                |
| (4)                    | .   | 24, 102, 167, 183                    |
| (5)                    | .   | 24, 102, 183, 185                    |
| (6)                    | .   | 25, 101, 183                         |
| (7)                    | .   | 25, 101, 183                         |
| (8)                    | .   | 24, 102, 183                         |
| (9)                    | .   | 25, 102, 183                         |
| ss. 79—81              | .   | 150                                  |
| s. 82                  | .   | 89, 90, 150                          |
| s. 83                  | .   | 150                                  |
| s. 84                  | .   | 151, 182, 186                        |
| s. 85                  | .   | 26, 50, 151, 168, 222                |
| (1)                    | .   | 25, 49                               |
| (3)                    | .   | 151                                  |
| (5)                    | .   | 26, 168                              |
| s. 86                  | .   | 151, 169, 242                        |
| s. 91                  | .   | 29, 35, 151, 169, 397                |
| (1)                    | .   | 25                                   |
| s. 93                  | .   | 397                                  |
| (1)                    | .   | 151                                  |
| s. 94                  | .   | 181, 397                             |
| s. 95                  | .   | 25, 101, 102, 183, 397               |
| (a)                    | .   | 26                                   |
| s. 96                  | .   | 242, 397                             |
| (1)                    | .   | 26                                   |
| s. 98                  | .   | 130, 165, 166                        |
| s. 99                  | .   | 165, 166                             |
| s. 100                 | .   | 165, 166, 379                        |
| s. 101                 | .   | 165, 166                             |

23 &amp; 24 Geo. 5, c. 51.

PAGE

|   |   |               |
|---|---|---------------|
| (Local Government Act, 1933)—continued. |   |               |
| s. 102 . . . . .                        |   | 165, 166      |
| s. 103 . . . . .                        |   | 165, 166, 379 |
| s. 104 . . . . .                        |   | 166, 237      |
| s. 105 . . . . .                        |   | 166, 367      |
| s. 106 . . . . .                        | 130, 155, 166, 367, 378                             |               |
| (2) . . . . .                           |   | 155           |
| (5) . . . . .                           |   | 155           |
| s. 107 . . . . .                        |   | 130, 166      |
| s. 108 . . . . .                        |   | 155, 166      |
| s. 109 . . . . .                        |   | 166           |
| s. 110 . . . . .                        |   | 155, 166      |
| s. 111 . . . . .                        |   | 166           |
| s. 112 . . . . .                        |   | 155, 166      |
| (1) . . . . .                           |   | 155           |
| s. 113 . . . . .                        |   | 166           |
| s. 114 . . . . .                        |   | 166           |
| s. 115 . . . . .                        |   | 166           |
| (1) . . . . .                           |   | 238           |
| s. 116 . . . . .                        |   | 166, 238      |
| s. 117 . . . . .                        |   | 166           |
| s. 118 . . . . .                        |   | 166           |
| s. 119 . . . . .                        |   | 167, 240      |
| s. 120 . . . . .                        |   | 167, 240      |
| (1) . . . . .                           |   | 384           |
| (2) . . . . .                           |   | 384           |
| s. 121 . . . . .                        | 167, 168, 237, 380                                  |               |
| s. 122 . . . . .                        | 64, 167, 238, 379, 384                              |               |
| s. 123 . . . . .                        | 167, 240, 385                                       |               |
| (1) . . . . .                           |   | 25, 102       |
| (2) . . . . .                           |   | 102, 167      |
| (3) . . . . .                           |   | 25, 102       |
| s. 124 . . . . .                        |   | 168           |
| (3) . . . . .                           |   | 166, 238      |
| s. 125 . . . . .                        |   | 156, 175      |
| s. 127 . . . . .                        |   | 35            |
| s. 129 . . . . .                        |   | 2, 262        |
| (1) . . . . .                           |   | 319           |
| s. 130 . . . . .                        |   | 2             |
| s. 139 . . . . .                        |   | 158           |
| s. 140 . . . . .                        | 163, 215, 233                                       |               |
| (1) . . . . .                           | 159, 233, 234                                       |               |
| (2) . . . . .                           |   | 159           |
| (3) . . . . .                           |   | 159           |
| (4) . . . . .                           |   | 159, 160      |
| (5) . . . . .                           |   | 160           |
| s. 141 . . . . .                        |   | 215, 314      |
| (6) . . . . .                           |   | 314           |
| s. 143 . . . . .                        |   | 160           |
| (2) . . . . .                           |   | 160, 233      |
| s. 144 . . . . .                        |   | 160, 189      |
| s. 145 . . . . .                        |   | 160, 189      |
| s. 146 . . . . .                        | 160, 192, 214, 215, 217, 218, 219, 232, 235,<br>314 |               |
| (1) . . . . .                           | 219, 222, 223, 228, 233                             |               |
| (a) . . . . .                           |   | 223           |
| (b) . . . . .                           |   | 219, 223      |
| (c)—(g) . . . . .                       |   | 223           |
| (3) . . . . .                           | 219, 228, 229, 230                                  |               |
| (4) . . . . .                           |   | 229, 230, 235 |
| (5) . . . . .                           | 230, 231, 232, 314, 315                             |               |
| (6) . . . . .                           |   | 220, 223      |
| (7) . . . . .                           |   | 220, 235      |
| (8) . . . . .                           |   | 220           |
| s. 147 . . . . .                        |   | 189           |
| s. 148 . . . . .                        |   | 159, 164, 220 |
| (1) . . . . .                           |   | 220, 372      |
| (f) . . . . .                           |   | 376           |

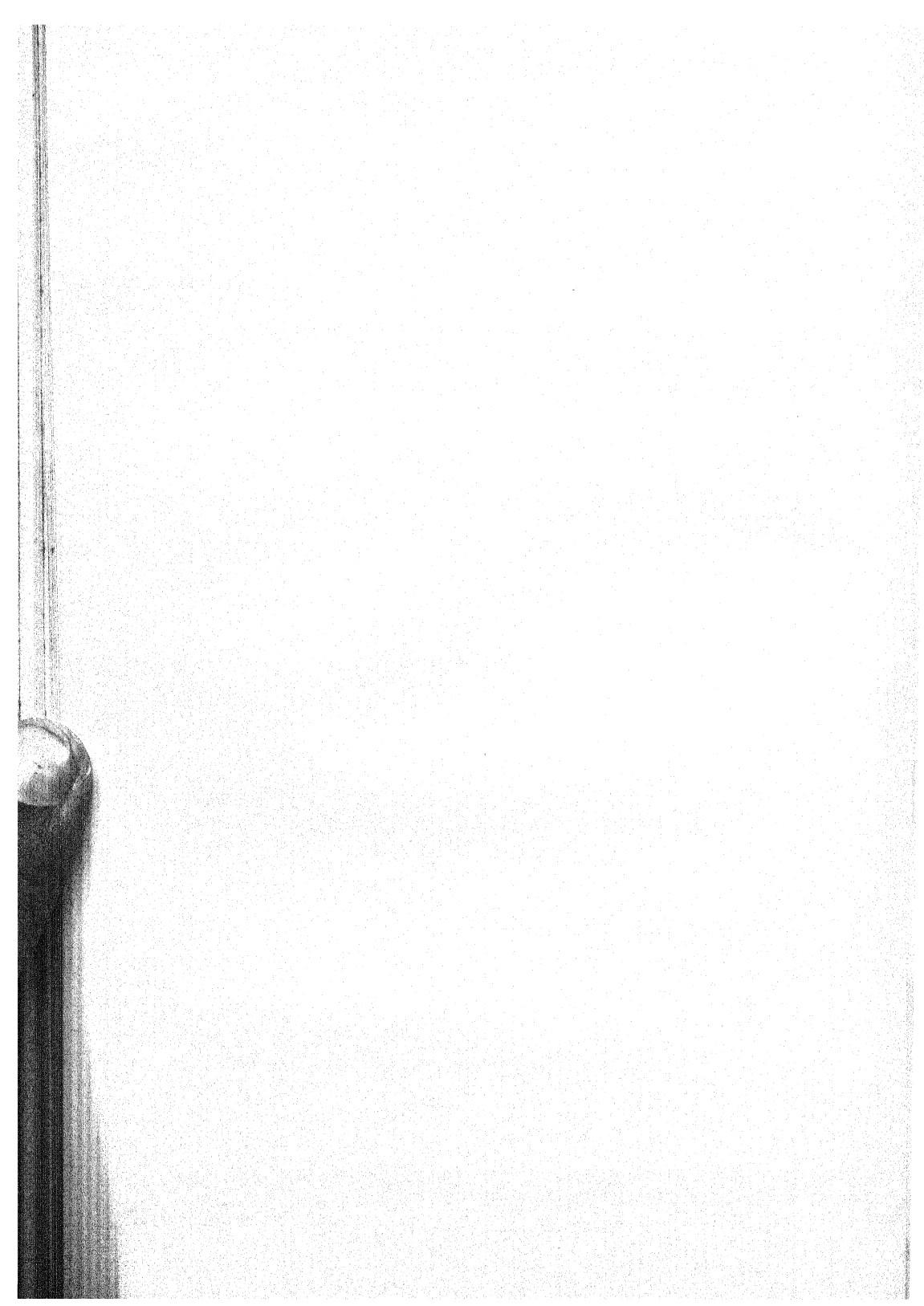
| 23 & 24 Geo. 5, c. 51.                          | PAGE                                   |
|---|--|
| (Local Government Act, 1933)— <i>continued.</i> |  |
| s. 149 . . . . .                                | 159, 220                               |
| (2) . . . . .                                   | 192, 220                               |
| s. 150 . . . . .                                | 159                                    |
| s. 151 . . . . .                                | 159                                    |
| (1) . . . . .                                   | 376                                    |
| (2) . . . . .                                   | 376                                    |
| (4) . . . . .                                   | 376                                    |
| (5) . . . . .                                   | 376                                    |
| s. 152 . . . . .                                | 159                                    |
| (1) (b) . . . . .                               | 376                                    |
| s. 153 . . . . .                                | 160                                    |
| s. 157 . . . . .                                | 47, 155, 156, 176                      |
| (2) . . . . .                                   | 47                                     |
| s. 158 . . . . .                                | 47, 156, 176                           |
| s. 159 . . . . .                                | 156, 176, 402                          |
| s. 160 . . . . .                                | 156, 176                               |
| (1) . . . . .                                   | 176                                    |
| (6) . . . . .                                   | 177                                    |
| s. 161 . . . . .                                | 156, 176                               |
| (2) . . . . .                                   | 177                                    |
| s. 162 . . . . .                                | 156                                    |
| s. 163 . . . . .                                | 81, 156, 177                           |
| (1) . . . . .                                   | 52                                     |
| (2) . . . . .                                   | 52, 177                                |
| s. 164 . . . . .                                | 80, 156, 177, 402                      |
| s. 165 . . . . .                                | 156, 177, 402                          |
| s. 166 . . . . .                                | 156, 177, 402                          |
| s. 167 . . . . .                                | 47                                     |
| s. 168 . . . . .                                | 132                                    |
| (5) . . . . .                                   | 132                                    |
| s. 171 . . . . .                                | 47, 78, 155                            |
| s. 172 . . . . .                                | 79, 80, 82, 155                        |
| (2) . . . . .                                   | 80                                     |
| (3) . . . . .                                   | 79, 81                                 |
| (4) . . . . .                                   | 79                                     |
| s. 176 . . . . .                                | 52, 177                                |
| s. 179 . . . . .                                | 47, 175, 176                           |
| (b) . . . . .                                   | 80, 82                                 |
| (d) . . . . .                                   | 80, 82                                 |
| (e) . . . . .                                   | 80                                     |
| s. 180 . . . . .                                | 173, 201, 367, 399                     |
| (1) (a) . . . . .                               | 135                                    |
| (b) . . . . .                                   | 135                                    |
| (2) . . . . .                                   | 135                                    |
| (3) . . . . .                                   | 145                                    |
| s. 181 . . . . .                                | 134, 173, 174, 201, 212, 213, 367, 399 |
| (2) . . . . .                                   | 136                                    |
| (b) . . . . .                                   | 135                                    |
| s. 182 . . . . .                                | 173, 174, 399                          |
| (1) . . . . .                                   | 137                                    |
| s. 183 . . . . .                                | 173, 174, 399                          |
| s. 184 . . . . .                                | 173, 174                               |
| (2) . . . . .                                   | 138                                    |
| (4) . . . . .                                   | 138                                    |
| s. 185 . . . . .                                | 47, 151, 367                           |
| (1) . . . . .                                   | 80, 399                                |
| s. 186 . . . . .                                | 151                                    |
| s. 187 . . . . .                                | 151                                    |
| s. 190 (4) . . . . .                            | 33                                     |
| s. 195 . . . . .                                | 50, 151, 174                           |
| ss. 196—200 . . . . .                           | 151, 174                               |
| s. 201 . . . . .                                | 151, 174                               |
| (1) . . . . .                                   | 175                                    |
| s. 202 . . . . .                                | 151, 174                               |
| s. 203 . . . . .                                | 151, 174                               |
| s. 204 . . . . .                                | 4, 151, 174                            |
| ss. 205—214 . . . . .                           | 151, 174                               |

23 &amp; 24 Geo. 5, c. 51.

PAGE

|                                  |  |  |
|----------------------------------|--|--|
|                                  | (Local Government Act, 1933)— <i>continued.</i>  |  |
| s. 215 . . . . .                 | 151, 174   |  |
| (1) . . . . .                    | 51   |  |
| ss. 216—218 . . . . .            | 151, 174   |  |
| s. 219 . . . . .                 | 136  |  |
| s. 223 . . . . .                 | 136  |  |
| s. 224 . . . . .                 | 137, 184   |  |
| s. 228 (1) . . . . .             | 185  |  |
| s. 235 . . . . .                 | 137  |  |
| (1) (h) . . . . .                | 135  |  |
| (i) . . . . .                    | 143  |  |
| s. 240 . . . . .                 | 143  |  |
| s. 242 . . . . .                 | 116, 117   |  |
| s. 243 . . . . .                 | 146  |  |
| s. 244 . . . . .                 | 137  |  |
| s. 248 . . . . .                 | 146  |  |
| s. 249 . . . . .                 | 165  |  |
| s. 253 . . . . .                 | 132  |  |
| ss. 253 <i>et seq.</i> . . . . . | 159  |  |
| s. 254 . . . . .                 | 115, 165, 171  |  |
| s. 255 . . . . .                 | 158  |  |
| (1) . . . . .                    | 159  |  |
| s. 256 . . . . .                 | 117  |  |
| (1) . . . . .                    | 116  |  |
| (2) . . . . .                    | 116, 133   |  |
| s. 257 . . . . .                 | 165  |  |
| (1) . . . . .                    | 116  |  |
| (2) . . . . .                    | 116  |  |
| s. 258 (1) . . . . .             | 116  |  |
| s. 266 . . . . .                 | 12, 48   |  |
| (1) . . . . .                    | 27   |  |
| (2) . . . . .                    | 13, 26   |  |
| (a) . . . . .                    | 13   |  |
| (b) . . . . .                    | 13   |  |
| s. 267 . . . . .                 | 185, 188   |  |
| s. 268 . . . . .                 | 79, 155, 176, 255  |  |
| s. 269 . . . . .                 | 153  |  |
| s. 270 . . . . .                 | 153, 170   |  |
| s. 272 . . . . .                 | 287  |  |
| s. 274 . . . . .                 | 170  |  |
| s. 276 . . . . .                 | 130, 165, 262  |  |
| s. 277 . . . . .                 | 130, 185, 262, 384   |  |
| s. 278 . . . . .                 | 262  |  |
| s. 279 (1) . . . . .             | 172, 277   |  |
| s. 283 . . . . .                 | 133  |  |
| (1) . . . . .                    | 184  |  |
| (2) . . . . .                    | 137, 184   |  |
| (3) . . . . .                    | 137, 184, 185  |  |
| (4) . . . . .                    | 137, 184   |  |
| s. 285 . . . . .                 | 4, 235   |  |
| (1) . . . . .                    | 132  |  |
| (2) . . . . .                    | 116  |  |
| s. 286 . . . . .                 | 180, 266, 320  |  |
| s. 290 . . . . .                 | 121, 132, 159, 375   |  |
| (4) . . . . .                    | 116  |  |
| (5) . . . . .                    | 116  |  |
| s. 291 (1) . . . . .             | 116  |  |
| (2) . . . . .                    | 116  |  |
| s. 292 . . . . .                 | 162  |  |
| s. 294 . . . . .                 | 185, 242   |  |
| s. 295 . . . . .                 | 179  |  |
| s. 299 . . . . .                 | 4  |  |
| s. 300 . . . . .                 | 186  |  |
| s. 301 . . . . .                 | 223  |  |
| s. 305 . . . . .                 | 47, 78, 79, 98, 101, 102, 149, 155, 159, 166,<br>180, 182, 183, 188, 189, 191, 219, 228, |  |
|                                  | 319, 320, 376  |  |
| s. 307 . . . . .                 | 20, 27, 49, 79, 80, 399  |  |

| 23 & 24 Geo. 5, c. 51. | (Local Government Act, 1933)—continued.              | PAGE                   |
|------------------------|--|------------------------|
|                        | s. 307 (1) (iv)                                      | 191                    |
|                        | (vi)   | 385                    |
|                        | (3)  | 13                     |
| Sched. I.              | .  | 254                    |
|                        | Pt. I.   | 162                    |
|                        | Pt. II.  | 148, 194               |
|                        | Pt. III.   | 189                    |
| Sched. II.             | .  | 93, 179                |
|                        | Pt. I.   | 186                    |
|                        | Pt. II.  | 179                    |
| Sched. III., Pt. I.    | .  | 170, 171, 172          |
|                        | Pt. II.  | 150                    |
|                        | Pt. V.   | 27, 150, 170, 172, 183 |
| Sched. V.              | .  | 376, 377               |
| Sched. VII.            | .  | 175                    |
| Sched. IX.             | .  | 160                    |
| Sched. XI.             | .  | 49, 178, 185, 212, 399 |
|                        | Pt. I.   | 20                     |
|                        | Pt. II.  | 79, 80                 |
|                        | Pt. III.   | 161                    |
|                        | Pt. IV.  | 27, 79, 188, 214       |
| c. xlv.                | (Essex County Council Act, 1933)                     | 41, 42                 |
| 24 & 25 Geo. 5, c. 28. | (Gas Undertakings Act, 1934)                         | 132                    |
| c. 29.                 | (Unemployment Act, 1934)                             | 321                    |
| c. 45.                 | (Solicitors Act, 1934)                               | 265                    |
| c. 50.                 | (Road Traffic Act, 1934)                             | 154, 271, 316          |
| c. xl.                 | (London County Council (General Powers) Act, 1934)   | 97, 186                |
| c. lxxxix.             | (Middlesex County Council Act, 1934)                 | 239                    |
| c. xciv.               | (Weston-super-Mare Urban District Council Act, 1934) | 42                     |



# TABLE OF CASES

---

## A.

|   | PAGE          |
|---|---------------|
| Abercromby v. Fermoy Town Commissioners, [1900] 1 I. R. 302, C. A.  | 303           |
| Ambrose v. Kerrison (1851), 10 C. B. 776; 20 L. J. (C. P.) 135; 17 L. T. (o. s.) 41   | 83            |
| Anderson, <i>Ex parte</i> . See R. v. Wood, <i>Ex parte</i> Anderson.   |               |
| Anon. (1702), 12 Mod. Rep. 559.   | 263           |
| Aplin and Barrett, Ltd. v. Battersea Revenue Officer (1931), English Derating Appeals, Vol. II., 259  | 359           |
| Arnold v. Blaker (1871), L. R. 6 Q. B. 433; 40 L. J. (Q. B.) 185; 35 J. P. 775; 19 W. R. 1090   | 303           |
| ——— v. Morgan, [1911] 2 K. B. 314; 80 L. J. (K. B.) 955; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917  | 298           |
| ——— v. Poole Corpn. (1842), 2 Dowl. (N. s.) 574; 4 Man. & G. 860; 5 Scott (N. R.) 741; 12 L. J. (C. P.) 97; 7 J. P. 227; 7 Jur. 653                       | 23            |
| Arnott v. Whitby U.D.C. (1909), 101 L. T. 14; 73 J. P. 369; 7 L. G. R. 856;   | 280,          |
| Atcherley, <i>Ex parte</i> . See R. v. Wood, <i>Ex parte</i> Atcherley.   |               |
| A.-G. v. Antrobus, [1905] 2 Ch. 188; 74 L. J. (Ch.) 599; 92 L. T. 790; 69 J. P. 141; 21 T. L. R. 471; 49 Sol. Jo. 459; 3 L. G. R. 1071                    | 301           |
| ——— v. Biphosphated Guano Co. (1879), 11 Ch. D. 327; 49 L. J. (Ch.) 68; 40 L. T. 201; 27 W. R. 621, C. A.   | 297           |
| ——— v. Birkenhead Corpn. (1928), 93 J. P. 33; 27 L. G. R. 192   | 27            |
| ——— v. Compton (1842), 1 Y. & C. Ch. Cas. 417; 6 J. P. 183  | 310           |
| ——— v. Esher Linoleum Co., Ltd., [1901] 2 Ch. 647; 70 L. J. (Ch.) 808; 85 L. T. 414; 66 J. P. 71; 50 W. R. 22   | 295, 296      |
| ——— v. Gaskill (1882), 22 Ch. D. 537; 52 L. J. (Ch.) 163; 47 L. T. 566; 31 W. R. 135  | 16            |
| ——— v. Great Yarmouth Corpn. (1855), 21 Beav. 625; 25 L. T. (o. s.) 5; 3 W. R. 309  | 80            |
| ——— v. Hemingway (1916), 81 J. P. 112; 15 L. G. R. 161  | 296, 301, 303 |
| ——— v. Hill (1836), 2 M. & W. 160; 6 L. J. (Ex.) 105  | 274           |
| ——— v. Horner (1885), 11 App. Cas. 66; 55 L. J. (Q. B.) 193; 54 L. T. 281; 50 J. P. 564; 34 W. R. 641; 2 T. L. R. 202                                     | 304           |
| ——— v. London and South Western Rail. Co. (1905), 69 J. P. 110; 21 T. L. R. 220; 3 L. G. R. 1327  | 298           |
| ——— v. Mallock (1931), 146 L. T. 344; 48 T. L. R. 107; 30 L. G. R. 141  | 300           |
| ——— v. Manchester Corpn., [1906] 1 Ch. 643; 75 L. J. (Ch.) 330; 70 J. P. 201; 54 W. R. 307; 22 T. L. R. 261; 4 L. G. R. 365                               | 3             |
| ——— v. —————, [1931] 1 Ch. 254; 100 L. J. (Ch.) 33; 144 L. T. 112; 46 T. L. R. 629; 28 L. G. R. 634   | 296           |
| ——— v. Meyrick and Jones (1915), 79 J. P. 515   | 302           |
| ——— v. Watford R.D.C., [1912] 1 Ch. 417; 81 L. J. (Ch.) 281; 106 L. T. 27; 76 J. P. 74; 10 L. G. R. 364   | 296, 299, 302 |
| A.-G. and London Property Investment Trust, Ltd. v. Richmond Corpn. and Gosling & Sons (1903), 89 L. T. 700; 68 J. P. 73; 20 T. L. R. 131; 2 L. G. R. 628 | 301, 302      |
| A.-G. and Public Trustee v. Woolwich Metropolitan Borough Council (1929), 93 J. P. 173; 27 L. G. R. 700   | 302           |
| Austerberry v. Oldham Corpn. (1885), 29 Ch. D. 750; 55 L. J. (Ch.) 633; 53 L. T. 543; 49 J. P. 532; 33 W. R. 807; 1 T. L. R. 473, C. A.                   | 303, 304      |
| Austin v. Bethnal Green Guardians (1874), L. R. 9 C. P. 91; 43 L. J. (C. P.) 100; 29 L. T. 807; 38 J. P. 248; 22 W. R. 406                                | 13, 14, 22    |
| Ayr Harbour Trustees v. Oswald (1883), 8 App. Cas. 623  | 298           |

## B.

|  | PAGE   |
|--|--------|
| B. Aerodrome, Ltd. v. Dell, [1917] 2 K. B. 380; <i>sub nom.</i> Brighton-Shoreham Aerodrome, Ltd. v. Dell, 86 L. J. (K. B.) 1331; 117 L. T. 272; 81 J. P. 205; 33 T. L. R. 375; 15 L. G. R. 609 . . . . .  | 321    |
| Bailey (Stoke-on-Trent Revenue Officer) v. Potteries Electric Traction Co., Ltd., [1931] 1 K. B. 385; 100 L. J. (K. B.) 1; 143 L. T. 650; 94 J. P. 177; 28 L. G. R. 550, C. A.; on appeal, <i>sub nom.</i> Potteries Electric Traction Co., Ltd. v. Bailey (Stoke-on-Trent Revenue Officer), [1931] A. C. 151; 100 L. J. (K. B.) 153; 144 L. T. 410; 95 J. P. 64; 47 T. L. R. 154; 29 L. G. R. 131; (1926-31), 2 B. R. A. 573 349, 350, 351, 353, 356, 358 | 358    |
| Barclies Case (1658), 2 Sid. 101 . . . . .   | 72     |
| Barned's Banking Co., <i>Re</i> , <i>Ex parte</i> Contract Corp., (1867), 3 Ch. App. 105; 37 L. J. (Ch.) 81; 17 L. T. 267; 16 W. R. 193 . . . . .  | 14     |
| Barnett v. Eccles Corp., [1900] 2 Q. B. 423; 69 L. J. (Q. B.) 834; 83 L. T. 66; 64 J. P. 692; 16 T. L. R. 463, C. A. . . . .   | 279    |
| Barraclough v. Johnson (1838), 8 Ad. & El. 99; 3 Nev. & P. (K. B.) 233; 1 Will. Woll. & H. 162; 7 L. J. (Q. B.) 172; 2 Jur. 839 . . . . .  | 301    |
| Barras v. Aberdeen Steam Trawling and Fishing Co., Ltd., [1933] A. C. 402; 102 L. J. (P. C.) 33; 149 L. T. 169; 49 T. L. R. 391; 77 Sol. Jo. 215; 38 Com. Cas. 279 . . . . .   | 322    |
| Barrow-in-Furness Case (1886), 54 L. T. 618; 4 O'M. & H. 76 . . . . .  | 89     |
| Barton (Poplar Revenue Officer) v. Union Lighterage Co., Ltd., [1931] 1 K. B. 385; 100 L. J. (K. B.) 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 581; 28 L. G. R. 550; (1926-31), 2 B. R. A. 742, C. A. 358, 361  | 361    |
| Bateman v. Bluck (1852), 18 Q. B. 870; 21 L. J. (Q. B.) 406; 17 J. P. 4; 17 Jur. 386 . . . . .   | 301    |
| Bater and Birkenhead Corp., <i>Re</i> , [1893] 2 Q. B. 77; 62 L. J. (M. C.) 107; 69 L. T. 220; 58 J. P. 7; 41 W. R. 513; 9 T. L. R. 479; 37 Sol. Jo. 525; 4 R. 438, C. A. . . . .  | 280    |
| Baxter v. Taylor (1832), 4 B. & Ad. 72; 1 Nev. & M. (K. B.) 11; 2 L. J. (K. B.) 65 . . . . .   | 297    |
| Bean (William) & Sons, Ltd. v. Flaxton R.D.C., [1929] 1 K. B. 450; 98 L. J. (K. B.) 20; 139 L. T. 320; 92 J. P. 121; 26 L. G. R. 335, C. A. . . . .  | 27     |
| Beaton v. Glasgow Corp., [1908] S. C. 1010; 45 Sc. L. R. 780; 16 S. L. T. 207 . . . . .  | 307    |
| Benford v. Sims, [1898] 2 Q. B. 641; 67 L. J. (Q. B.) 655; 78 L. T. 718; 47 W. R. 46; 14 T. L. R. 424; 42 Sol. Jo. 556; 19 Cox, C. C. 141 . . . . .  | 411    |
| Bermondsey Vestry v. Brown (1865), L. R. 1 Eq. 204; 35 Beav. 226; 13 L. T. 574; 30 J. P. 118; 11 Jur. (N. S.) 1031; 14 W. R. 213 . . . . .   | 304    |
| Birkenhead Revenue Officer v. Birkenhead and District Co-operative Society, Ltd. (1934), Rating and Income Tax, Vol. XX., 53 . . . . .   | 359    |
| Blackwood v. R. (1882), 8 App. Cas. 82; 52 L. J. (P. C.) 10; 48 L. T. 441; 31 W. R. 645 . . . . .  | 323    |
| Blount v. Layard (1888), [1891] 2 Ch. 681, n.; 4 T. L. R. 512, C. A. . . . .   | 296    |
| Bolton Partners v. Lambert (1889), 41 Ch. D. 295; 58 L. J. (Ch.) 425; 60 L. T. 687; 37 W. R. 434; 5 T. L. R. 357, C. A. . . . .  | 22     |
| Boon v. Howard (1874), L. R. 9 C. P. 277; 2 Hop. & Colt. 208; 43 L. J. (C. P.) 115; 30 L. T. 382; 38 J. P. 678; 22 W. R. 535 . . . . .   | 322    |
| Bostock v. Ramsey U.D.C., [1900] 2 Q. B. 616; 69 L. J. (Q. B.) 945; 83 L. T. 358; 64 J. P. 660; 16 T. L. R. 520; 44 Sol. Jo. 642, C. A. . . . .  | 115    |
| Bottomley v. West Derby Assessment Committee, [1932] 1 K. B. 40; 95 J. P. 186; 47 T. L. R. 468; (1926-31), 2 B. R. A. 846, C. A. . . . .   | 362    |
| Bourke v. Davis (1889), 44 Ch. D. 110; 62 L. T. 34; 38 W. R. 167; 6 T. L. R. 87 . . . . .  | 301    |
| Bourne and Hollingsworth v. St. Marylebone Borough Council (1908), 72 J. P. 129; 24 T. L. R. 322; 6 L. G. R. 406; reversed, 72 J. P. 306; 24 T. L. R. 613; 6 L. G. R. 1141, C. A. . . . .  | 15, 48 |
| Bournemouth Commissioners v. Watts (1884), 14 Q. B. D. 87; 54 L. J. (Q. B.) 93; 51 L. T. 823; 49 J. P. 102; 33 W. R. 280; 1 T. L. R. 142 . . . . .   | 16, 17 |
| Bowyer, Philpott and Payne, Ltd. v. Mather, [1919] 1 K. B. 419; 88 L. J. (K. B.) 377; 120 L. T. 346; 83 J. P. 50; 17 L. G. R. 222 . . . . .  | 262    |
| Bozon v. Altrincham U.D.C., [1903] 1 K. B. 547; 72 L. J. (K. B.) 271; 67 J. P. 397; 51 W. R. 337; 19 T. L. R. 266; 47 Sol. Jo. 316; 1 L. G. R. 639, C. A. . . . .  | 17     |
| Brackley v. Midland Rail. Co. (1916), 85 L. J. (K. B.) 1596; 114 L. T. 1150; 80 J. P. 369; 14 L. G. R. 632, C. A. . . . .  | 303    |

|  | PAGE     |
|--|----------|
| Bradford Corpn. v. Webster, [1920] 2 K. B. 135; 89 L. J. (K. B.) 455; 123 L. T. 62; 84 J. P. 137; 36 T. L. R. 286; 64 Sol. Jo. 324; 18 L. G. R. 199 . . . . .          | 207, 208 |
| Bradshaw v. Beard (1862), 12 C. B. (N. S.) 344; 31 L. J. (C. P.) 273; 6 L. T. 458; 26 J. P. 630; 8 Jur. (N. S.) 1228 . . . . .   | 83       |
| Brierley Hill Local Board v. Pearshall (1884), 9 App. Cas. 595; 54 L. J. (Q. B.) 25; 51 L. T. 577; 49 J. P. 84; 33 W. R. 56 . . . . .                                  | 280      |
| Brighton Parish Guardians v. Strand Union Guardians, [1891] 2 Q. B. 156; 60 L. J. (M. C.) 105; 64 L. T. 722; 55 J. P. 743; 39 W. R. 581; 7 T. L. R. 552, C. A. . . . . | 323      |
| Bristol Co-operative Society, Ltd. v. Bristol Revenue Officer (1932), English Derating Appeals, Vol. III., 75 . . . . .  | 359      |
| British Electrical Repairs, Ltd. v. Glasgow Assessor, Land Valuation Appeal Case (Edinburgh) (1933), January . . . . .   | 352      |
| British Glanzstoff Manufacturing Co., Ltd. v. General Accident Fire and Life Assurance Corp., Ltd., [1913] A. C. 143 . . . . .   | 21       |
| British Museum Trustees v. Finnis (1833), 5 C. & P. 460; 1 Nev. & M. (M. C.) 379 . . . . .   | 302      |
| Brooks, Jenkins & Co. v. Torquay Corp., [1902] 1 K. B. 601; 71 L. J. (K. B.) 109; 85 L. T. 785; 66 J. P. 293; 18 T. L. R. 139 . . . . .                                | 22, 49   |
| Brown v. Dagenham U.D.C., [1929] 1 K. B. 737; 98 L. J. (K. B.) 565; 140 L. T. 615; 93 J. P. 147; 45 T. L. R. 284; 73 Sol. Jo. 144; 27 L. G. R. 225 . . . . .           | 379      |
| Burdekin, <i>Re</i> , [1895] 2 Ch. 136; 64 L. J. (Ch.) 561; 72 L. T. 629; 43 W. R. 534; 39 Sol. Jo. 452; 12 R. 243, C. A. . . . .                                      | 117      |
| Burgess v. Northwich Local Board (1880), 6 Q. B. D. 264; 50 L. J. (Q. B.) 219; 44 L. T. 154; 45 J. P. 256; 29 W. R. 931 . . . . .                                      | 279      |
| Byrne v. Statist Co., Ltd., [1914] 1 K. B. 622; 83 L. J. (K. B.) 625; 110 L. T. 510; 30 T. L. R. 254; 58 Sol. Jo. 340 . . . . .  | 61       |

## C.

|  |          |
|--|----------|
| Callaghan v. Twiss (1847), 9 I. L. R. 422 . . . . .  | 69       |
| Callow v. Tillstone (1900), 83 L. T. 411; 64 J. P. 823; 19 Cox, C. C. 576 . . . . .  | 411      |
| Canterbury Corpn. v. Cooper (1909), 100 L. T. 597; 73 J. P. 225; 53 Sol. Jo. 301; 7 L. G. R. 908, C. A. . . . .  | 79       |
| Cardiff Revenue Officer v. Cardiff Assessment Committee and Western Mail, Ltd., [1931] 1 K. B. 47; 99 L. J. (K. B.) 672; 143 L. T. 500; 94 J. P. 146; 46 T. L. R. 499; 74 Sol. Jo. 466; 28 L. G. R. 372; (1926-31), 2 B. R. A. 542 . . . . . | 346, 351 |
| Carmarthen Revenue Officer v. United Dairies (Wholesale), Ltd. (1931), 47 T. L. R. 233; 75 Sol. Jo. 138 . . . . .  | 354, 359 |
| Cary-Elwes' Contract, <i>Re</i> , [1906] 2 Ch. 143; 75 L. J. (Ch.) 571; 94 L. T. 845; 70 J. P. 345; 54 W. R. 480; 22 T. L. R. 511; 50 Sol. Jo. 464; 4 L. G. R. 838 . . . . .   | 54       |
| Chapman v. Cripps (1862), 2 F. & F. 864 . . . . .  | 300      |
| Chapple v. Cooper (1844), 13 M. & W. 252; 13 L. J. (Ex.) 286; 3 L. T. (o. s.) 340 . . . . .  | 83       |
| Chard v. Bush, [1923] 2 K. B. 849; 92 L. J. (K. B.) 1013; 130 L. T. 60; 87 J. P. 154; 39 T. L. R. 693; 68 Sol. Jo. 104; 21 L. G. R. 601; 27 Cox, C. C. 527 . . . . .   | 181      |
| Chinnock v. Hartley Wintney R.D.C. (1899), 63 J. P. 327 . . . . .  | 300, 301 |
| Chorley, <i>Ex parte</i> . See R. v. Hendon R.D.C., <i>Ex parte</i> Chorley.   |          |
| Church v. Imperial Gas Light and Coke Co. (1838), 6 Ad. & El. 846; 3 Nev. & P. (K. B.) 35; 1 Will. Woll. & H. 137; 7 L. J. (Q. B.) 118 . . . . .   | 14, 15   |
| Chuter v. Freeth and Pocock, Ltd., [1911] 2 K. B. 832; 80 L. J. (K. B.) 1322; 105 L. T. 238; 75 J. P. 430; 27 T. L. R. 467; 22 Cox, C. C. 573; 9 L. G. R. 1055 . . . . .   | 265      |
| Citizens' Life Assurance Co. v. Brown, [1904] A. C. 423; 73 L. J. (P. C.) 102; 90 L. T. 739; 53 W. R. 176; 20 T. L. R. 497 . . . . .   | 307      |
| City of London Gas-light and Coke Co. v. Nicholls (1826), 2 C. & P. 365 . . . . .  | 14       |
| Clark v. London General Omnibus Co., Ltd., [1906] 2 K. B. 648; 75 L. J. (K. B.) 907; 95 L. T. 435; 22 T. L. R. 691; 50 Sol. Jo. 631, C. A. . . . .   | 83       |
| Clarke v. Cuckfield Union Guardians (1852), Bail Ct. Cas. 81; 21 L. J. (Q. B.) 349; 19 L. T. (o. s.) 207; 16 J. P. 457; 16 Jur. 686 . . . . .  | 15       |
| ——— v. Imperial Gas Light and Coke Co. (1832), 4 B. & Ad. 315; 1 Nev. & M. (K. B.) 206; 2 L. J. (K. B.) 30 . . . . .   | 14       |

|   | PAGE          |
|---|---------------|
| Clarke <i>v.</i> Lewisham Borough Council (1902), 67 J. P. 195; 19 T. L. R. 62; 1 L. G. R. 63 . . . . .   | 18            |
| Clayton's Settled Estates, <i>Re</i> , [1926] Ch. 279; 95 L. J. (Ch.) 169; 134 L. T. 568; 70 Sol. Jo. 427 . . . . .   | 318           |
| Clothier <i>v.</i> Webster (1862), 12 C. B. (N. S.) 790; 31 L. J. (C. P.) 316; 6 L. T. 461; 9 Jur. (N. S.) 231; 10 W. R. 624 . . . . .  | 279           |
| Coats <i>v.</i> Herefordshire County Council, [1909] 2 Ch. 579; 78 L. J. (Ch.) 568; 100 L. T. 695; 73 J. P. 355; 53 Sol. Jo. 245; on appeal, [1909] 2 Ch. 601; 78 L. J. (Ch.) 781; 101 L. T. 644, C. A. . . . .   | 297, 301, 302 |
| Colchester (Lord) <i>v.</i> Kewney (1867), L. R. 2 Exch. 253; 36 L. J. (Ex.) 172; 16 L. T. 463; 31 J. P. 468; 15 W. R. 930 . . . . .  | 274           |
| Contract Corpns., <i>Ex parte</i> . See Barned's Banking Co., <i>Re</i> , <i>Ex parte</i> Contract Corpns.  |               |
| Coombes <i>v.</i> Berks JJ. (1883), 9 App. Cas. 61; 53 L. J. (Q. B.) 239; 50 L. T. 405; 48 J. P. 421; 32 W. R. 525; 2 Tax Cas. 1 . . . . .  | 269, 272, 274 |
| Cooper <i>v.</i> Walker. See Fisher <i>v.</i> Prowse, Cooper <i>v.</i> Walker.  |               |
| Copland <i>v.</i> Powell (1823), 1 Bing. 369; 8 Moore (C. P.) 400; 2 L. J. (o. s.) (C. P.) 22 . . . . .   | 323           |
| Corsellis <i>v.</i> L.C.C., [1907] 1 Ch. 704; 76 L. J. (Ch.) 313; 96 L. T. 614; 71 J. P. 219; 23 T. L. R. 366; 5 L. G. R. 577; on appeal, [1908] 1 Ch. 13; 77 L. J. (Ch.) 120; 98 L. T. 475; 71 J. P. 561; 24 T. L. R. 80; 6 L. G. R. 78, C. A. . . . . | 297           |
| Coulson and Purley U.D.C. <i>v.</i> Surrey County Council, [1934] Ch. 694; 103 L. J. (Ch.) 342; 98 J. P. 437; 32 L. G. R. 447 . . . . .   | 245, 248      |
| Courtauld <i>v.</i> Leigh (1869), L. R. 4 Exch. 126; 38 L. J. (Ex.) 45; 19 L. T. 737; 17 W. R. 466 . . . . .  | 323           |
| Crampton <i>v.</i> Varna Rail. Co. (1872), 7 Ch. App. 562; 41 L. J. (Ch.) 817; 20 W. R. 713 . . . . .   | 16            |
| Crisp <i>v.</i> L.C.C., [1899] 1 Q. B. 720; 68 L. J. (Q. B.) 499; 80 L. T. 654; 63 J. P. 484 . . . . .  | 289           |
| Crook <i>v.</i> Seaford Corpns. (1871), 6 Ch. App. 551; 25 L. T. 1; 35 J. P. 804; 19 W. R. 938 . . . . .  | 16            |
| Cubitt <i>v.</i> Maxse (Lady Caroline) (1873), L. R. 8 C. P. 704; 42 L. J. (C. P.) 278; 29 L. T. 244; 21 W. R. 789; <i>sub nom.</i> Maxse <i>v.</i> Cubitt, 37 J. P. 808 . . . . .  | 297, 305      |
| Curtis <i>v.</i> Shinner (1906), 95 L. T. 31; 70 J. P. 272; 22 T. L. R. 448; 50 Sol. Jo. 441; 21 Cox, C. C. 210 . . . . .   | 358           |

## D.

|  |            |
|--|------------|
| Daimler Co., Ltd. <i>v.</i> Leeds Rating Authority (1933), Derating Appeals, Vol. IV., 73 . . . . .  | 352        |
| Dartford Union Guardians <i>v.</i> Trickett & Sons (1888), 59 L. T. 754; 53 J. P. 277; affirmed (1889), 5 T. L. R. 619, C. A. . . . .                              | 13, 17, 18 |
| Davies <i>v.</i> Stephens (1836), 7 C. & P. 570 . . . . .  | 297        |
| Davies and Rhondda U.D.C. <i>v.</i> Re (1899), 80 L. T. 696 . . . . .  | 279, 280   |
| Davis <i>v.</i> Leicester Corpns., [1894] 2 Ch. 208; 63 L. J. (Ch.) 440; 70 L. T. 599; 42 W. R. 610; 10 T. L. R. 385; 38 Sol. Jo. 362; 7 R. 609, C. A. . . . .     | 79, 81     |
| ——— <i>v.</i> Witney U.D.C. (1889), 63 J. P. 279; 15 T. L. R. 275, C. A. . . . .   | 280        |
| Dawes <i>v.</i> Hawkins (1860), 8 C. B. (N. S.) 848; 29 L. J. (C. P.) 343; 4 L. T. 288; 25 J. P. 502; 7 Jur. (N. S.) 262 . . . . .                                 | 297, 304   |
| Debenham <i>v.</i> Metropolitan Board of Works (1880), 6 Q. B. D. 112; 50 L. J. (M. C.) 29; 43 L. T. 596; 45 J. P. 190; 29 W. R. 353 . . . . .                     | 288        |
| Debtor, A. (No. 229 of 1927), <i>Re</i> , [1927] 2 Ch. 367; 96 L. J. (Ch.) 381; 137 L. T. 507; [1927] B. & C. R. 127, C. A. . . . .                                | 100        |
| Dent <i>v.</i> Bournemouth Corpns. (1897), 66 L. J. (Q. B.) 395 . . . . .  | 282        |
| Dependable Upholstery, Ltd. <i>v.</i> Brasted, [1932] 1 K. B. 291; 100 L. J. (K. B.) 631; 145 L. T. 588; 47 T. L. R. 521; (1926-31), 2 B. R. A. 485, C. A. . . . . | 363        |
| Diggle <i>v.</i> London and Blackwall Rail. Co. (1850), 5 Exch. 442; 6 Ry. & Can. Cas. 590; 19 L. J. (Ex.) 308; 15 L. T. (o. s.) 208; 14 Jur. 937 . . . . .        | 13, 14, 15 |
| Dilworth <i>v.</i> Stamps Commissioners, [1899] A. C. 99; 68 L. J. (P. C.) 1; 79 L. T. 473; 47 W. R. 337; 15 T. L. R. 61 . . . . .                                 | 321        |
| Dixon, <i>Re</i> , [1892] P. 386; 56 J. P. 841; 8 T. L. R. 744 . . . . .   | 258        |
| Douglass <i>v.</i> Rhyl U.D.C., [1913] 2 Ch. 407; 82 L. J. (Ch.) 537; 109 L. T. 30; 77 J. P. 373; 29 T. L. R. 605; 57 Sol. Jo. 627; 11 L. G. R. 1162 . . . . .     | 15         |
| Dunlop Pneumatic Tyre Co., Ltd. <i>v.</i> New Garage and Motor Co., Ltd., [1915] A. C. 79; 83 L. J. (K. B.) 1574; 111 L. T. 862; 30 T. L. R. 625 . . . . .         | 20         |

## TABLE OF CASES

XXXIX

|  | PAGE |
|--|------|
| Durrant v. Branksome U.D.C., [1897] 2 Ch. 291; 66 L. J. (Ch.) 653; 76 L. T. 739; 61 J. P. 472; 46 W. R. 134; 13 T. L. R. 482; 41 Sol. Jo. 621, C. A. | 283  |
| Dyte v. St. Pancras Board of Guardians (1872), 27 L. T. 342; 36 J. P. 375 .  | 22   |

## E.

|  |     |
|--|-----|
| East v. Berkshire County Council (1911), 106 L. T. 65; 76 J. P. 35 .   | 115 |
| East London Waterworks Co. v. Mile End Old Town Trustees (1851), 17 Q. B. 512; <i>sub nom.</i> R. v. East London Waterworks Co., 21 L. J. (M. C.) 49; 18 L. T. (o. s.) 73; 16 J. P. 229; 16 Jur. 121 . | 323 |
| Eckersley v. Mersey Docks and Harbour Board, [1894] 2 Q. B. 667; 71 L. T. 308; 9 R. 827, C. A.   | 19  |
| Edwards v. Edwards (1834), 2 Cr. & M. 612; 4 Tyr. 438; 3 L. J. (Ex.) 204 .   | 83  |
| — v. Grand Junction Rail. Co. (1836), 1 My. & Cr. 650; 1 Ry. & Can. Cas. 173; 6 L. J. (Ch.) 47 .   | 16  |
| Elias v. Pasmore, [1934] 2 K. B. 164; 103 L. J. (K. B.) 223; 150 L. T. 438; 98 J. P. 92; 50 T. L. R. 196; 32 L. G. R. 23 .   | 207 |
| Errington v. Minister of Health. <i>See</i> Housing Acts, 1925-1930, <i>Re</i> , Errington v. Minister of Health.  |     |
| Evans & Co., Ltd. v. L.C.C., [1914] 3 K. B. 315; 83 L. J. (K. B.) 1264; 111 L. T. 288; 78 J. P. 345; 30 T. L. R. 509; 24 Cox, C. C. 290; 12 L. G. R. 1079 .  | 265 |
| Eyre v. New Forest Highway Board (1892), 56 J. P. 517; on appeal, 8 T. L. R. 648, C. A.  | 300 |

## F.

|   |                    |
|---|--------------------|
| Farquhar v. Newbury R.D.C., [1909] 1 Ch. 12; 78 L. J. (Ch.) 170; 100 L. T. 17; 73 J. P. 1; 25 T. L. R. 39; 53 Sol. Jo. 46; 7 L. G. R. 364, C. A. 302, 303   |                    |
| Fielding v. Morley Corp., [1899] 1 Ch. 1; 67 L. J. (Ch.) 611; 79 L. T. 231; 47 W. R. 295, C. A.; affirmed, [1900] A. C. 133; 69 L. J. (Ch.) 314; 82 L. T. 29; 64 J. P. 484; 48 W. R. 545; 16 T. L. R. 219 . | 114                |
| Finn (Wimbledon Revenue Officer) v. Kerslake, [1931] A. C. 457; 100 L. J. (K. B.) 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926-31), 2 B. R. A. 886 .                            | 351, 353           |
| Fisher v. Oldham Corp., [1930] 2 K. B. 364; 99 L. J. (K. B.) 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154 .                                       | 204, 207, 208, 398 |
| — v. Prowse, Cooper v. Walker (1862), 2 B. & S. 770; 31 L. J. (Q. B.) 212; 6 L. T. 711; 26 J. P. 613; 8 Jur. (N. s.) 1208 .   | 303, 304           |
| Fishmongers' Co. v. Robertson (1848), 5 Man. & G. 131; 6 Scott (N. R.) 56; <i>sub nom.</i> London City Fishmongers' Mystery v. Robertson, 12 L. J. (C. P.) 185 .  | 16                 |
| Floyd v. Barker (1607), 12 Co. Rep. 23 .  | 70                 |
| Folkestone Corp. v. Brockman, [1914] A. C. 338; 83 L. J. (K. B.) 745; 110 L. T. 834; 78 J. P. 273; 30 T. L. R. 297; 12 L. G. R. 334 .   | 296, 299           |
| Ford v. Newth. <i>See</i> Gloucester Municipal Election Petition, 1900, <i>Re</i> , Ford v. Newth.  |                    |
| Forsey and Hollebone's Contract, <i>Re</i> , [1927] 2 Ch. 379; 97 L. J. (Ch.) 4; 138 L. T. 26; 91 J. P. 182; 71 Sol. Jo. 823; 25 L. G. R. 442, C. A.  | 50                 |
| Foster v. East Westmoreland R.D.C. (1903), 68 J. P. 103 .   | 284, 427           |
| Foxall (Foxhall) v. Barnett (1853), 2 E. & B. 928; 23 L. J. (Q. B.) 7; 22 L. T. (o. s.) 100; 18 J. P. 41; 18 Jur. 41; 2 W. R. 61; 2 C. L. R. 273 .  | 70                 |

## G.

|  |     |
|--|-----|
| Gale, <i>Ex parte</i> (1905), 69 J. P. 281; 3 L. G. R. 421; <i>sub nom.</i> <i>Re</i> Cheltenham Auditors' Case, <i>Ex parte</i> Gale, 49 Sol. Jo. 334 . | 93  |
| Garlick v. Knottingley U.D.C. (1904), 68 J. P. 494; 2 L. G. R. 1345 .  | 284 |
| Garnett v. Ferrand (1827), 6 B. & C. 611; 9 Dow. & Ry. (K. B.) 657; 4 Dow. & Ry. (M. C.) 441; 5 L. J. (o. s.) (K. B.) 221 .                              | 71  |

|   | PAGE     |
|---|----------|
| Gautret v. Egerton (1867), L. R. 2 C. P. 371; 36 L. J. (C. P.) 191; 15 W. R. 638  | 303      |
| General Steam Navigation Co. v. Rolt (1858), 6 C. B. (N. S.) 550; 6 Jur. (N. S.) 801; 8 W. R. 223   | 21       |
| Gilbert v. Gosport and Alverstoke Urban Council, [1916] 2 Ch. 587; 86 L. J. (Ch.) 54; 115 L. T. 760; 81 J. P. 89; 60 Sol. Jo. 695; 15 L. G. R. 62   | 114      |
| Glamorgan Coal Co. v. Glamorgan Standing Joint Committee of Quarter Sessions and County Council, [1915] 1 K. B. 384; 84 L. J. (K. B.) 362; 112 L. T. 219; 79 J. P. 164; 13 L. G. R. 462                     | 211      |
| — v. Glamorganshire Standing Joint Committee, Powell Duffryn Steam Coal Co. v. Same, [1916] 2 K. B. 206; 85 L. J. (K. B.) 1193; 114 L. T. 717; 80 J. P. 289; 32 T. L. R. 293; 14 L. G. R. 419, C. A.        | 209      |
| Glasgow Corp. v. Lorimer, [1911] A. C. 209; 80 L. J. (P. C.) 175; 104 L. T. 354   | 307      |
| Glenn v. Leith (Leech) (1853), 21 L. T. (o. s.) 141; 1 C. L. R. 569   | 19       |
| Gloucester (Town) Case (1593), Popl. 16   | 195      |
| Gloucester Municipal Election Petition 1900, <i>Re</i> , Ford v. Newth, [1901] 1 K. B. 683; 70 L. J. (K. B.) 459; 84 L. T. 354; 65 J. P. 391; 49 W. R. 345; 17 T. L. R. 325; 45 Sol. Jo. 327                | 101      |
| Goodyear v. Weymouth and Melcombe Regis Corp. (1865), Har. & Ruth. 67; 35 L. J. (C. P.) 12  | 19       |
| Gorton Local Board v. Prison Commissioners (1887), [1904] 2 K. B. 165, n.; 73 L. J. (K. B.) 114, n.; 89 L. T. 478, n.; 68 J. P. 27; 52 W. R. 233, n.; 1 L. G. R. 838, n.                                    | 272, 274 |
| Graham v. Hart, [1908] S. C. (J.) 26  | 100      |
| Grand Junction Canal Co. v. Petty (1888), 21 Q. B. D. 273; 57 L. J. (Q. B.) 572; 59 L. T. 767; 52 J. P. 692; 36 W. R. 795, C. A.  | 298      |
| Grand Surrey Canal Co. v. Hall (1840), 1 Man. & G. 392; 1 Scott (N. R.) 264; 9 L. J. (C. P.) 329  | 298      |
| Great Eastern Rail. Co. v. Goldsmid (1884), 9 App. Cas. 927; 54 L. J. (Ch.) 162; 52 L. T. 270; 49 J. P. 260; 33 W. R. 81  | 304      |
| Greenwich Board of Works v. Maudslay (1870), L. R. 5 Q. B. 397; 39 L. J. (Q. B.) 205; 23 L. T. 121; 35 J. P. 8; 18 W. R. 948  | 301      |
| Grieg v. Edinburgh University (1868), L. R. 1 Sc. & Div. 348; 32 J. P. 627  | 272      |
| Grenfell v. Inland Revenue Commissioners (1876), 1 Ex. D. 242; 45 L. J. (Q. B.) 465; 34 L. T. 426; 24 W. R. 582   | 322      |
| Grove (Dudley Revenue Officer) v. Lloyd's British Testing House Co., Ltd., [1931] A. C. 450; 100 L. J. (K. B.) 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926-31), 2 B. R. A. 886 | 356, 360 |

## H.

|  |          |
|--|----------|
| Haigh v. North Brierley Union (1858), E. B. & E. 873; 28 L. J. (Q. B.) 62; 31 L. T. (o. s.) 213; 23 J. P. 195; 5 Jur. (N. S.) 511; 6 W. R. 679           | 15       |
| Haigh with Aspull New Parish, <i>Re</i> , [1919] P. 143; 35 T. L. R. 340   | 259      |
| Hall v. Bristol Corp. (1867), L. R. 2 C. P. 322; 36 L. J. (C. P.) 110; 15 L. T. 572; 31 J. P. 376; 15 W. R. 404  | 279      |
| Hall & Co., Ltd. v. Surrey S. E. Assessment Committee (1933), Derating Appeals, Vol. IV., 29   | 356      |
| Hammersmith and City Rail. Co. v. Brand (1869), L. R. 4 H. L. 171; 38 L. J. (Q. B.) 265; 21 L. T. 238; 34 J. P. 36; 18 W. R. 12                          | 280      |
| Hamond v. Howell (1677), 2 Mod. Rep. 218   | 70       |
| Harding v. Stokes (1837), 2 M. & W. 233; Murp. & H. 6; 6 L. J. (Ex.) 76; 1 J. P. 108; 1 Jur. 200   | 89       |
| Harper v. Charlesworth (1825), 4 B. & C. 574; 6 Dow. & Ry. (K. B.) 572; 3 L. J. (o. s.) (K. B.) 265; 4 L. J. (o. s.) (K. B.) 22                          | 297, 301 |
| Harris v. Smith (1879), 44 J. P. 361   | 412      |
| — v. Thompson (1853), 13 C. B. 333; 20 L. T. (o. s.) 99  | 308      |
| Harrison v. Danby (1870), 34 J. P. 759   | 303      |
| — v. Seymour (1866), L. R. 1 C. P. 518; Har. & Ruth. 567; 35 L. J. (C. P.) 264   | 21       |
| Hawke v. Hulton (E.) & Co., Ltd., [1909] 2 K. B. 93; 78 L. J. (K. B.) 633; 100 L. T. 905; 73 J. P. 295; 25 T. L. R. 474; 22 Cox, C. C. 122; 16 Mans. 164 | 265      |
| Healey v. Batley Corp. (1875), L. R. 19 Eq. 375; 44 L. J. (Ch.) 642; 39 J. P. 423  | 302      |

|   | PAGE             |
|---|------------------|
| Henderson v. Australian Royal Mail Steam Navigation Co. (1855), 5 E. & B. 409 ; 24 L. J. (Q. B.) 322 ; 25 L. T. (o. s.) 234 ; 20 J. P. 132 ; 1 Jur. (N. s.) 830 ; 3 W. R. 571 ; 3 C. L. R. 1181 . . . . .   | 15               |
| Herring v. Metropolitan Board of Works (1865), 19 C. B. (N. s.) 510 ; 34 L. J. (M. C.) 224 . . . . .  | 279, 281         |
| Hesketh v. Birmingham Corpn., [1924] 1 K. B. 260 ; 93 L. J. (K. B.) 461 ; 130 L. T. 476 ; 88 J. P. 77 ; 22 L. G. R. 281, C. A. . . . .  | 282              |
| Hickman & Co. v. Roberts, [1913] A. C. 229 ; 82 L. J. (K. B.) 678 ; 108 L. T. 436, n. ; <i>sub nom.</i> Roberts v. Hickman & Co., 2 Hudson's B. C., 4th ed., 426 . . . . .  | 20               |
| Higgins (W.), Ltd. v. Northampton Corpn., [1927] 1 Ch. 128 ; 96 L. J. (Ch.) 38 ; 136 L. T. 235 ; 90 J. P. 82 . . . . .  | 21               |
| Hines (Ipswich Revenue Officer) v. Eastern Counties Farmers' Co-operative Association, Ltd., [1931] A. C. 456 ; 100 L. J. (K. B.) 271 ; 145 L. T. 73 ; 95 J. P. 115 ; 47 T. L. R. 308 ; 29 L. G. R. 279 ; (1926-31), 2 B. R. A. 886 . . . . .   | 354, 359         |
| Hirst v. West Riding Union Banking Co., [1901] 2 K. B. 560 ; 70 L. J. (K. B.) 828 ; 85 L. T. 3 ; 49 W. R. 715 ; 17 T. L. R. 629 ; 45 Sol. Jo. 614, C. A. . . . .  | 265              |
| Hobbs v. Winchester Corpn., [1910] 2 K. B. 471 ; 79 L. J. (K. B.) 1123 ; 102 L. T. 841 ; 74 J. P. 413 ; 26 T. L. R. 557 ; 8 L. G. R. 1072, C. A. . . . .  | 279,<br>280, 281 |
| Hodge v. Matlock Bath and Scarthin Nick U.D.C. and Nuttall (1910), 75 J. P. 65 ; 27 T. L. R. 129 ; 8 L. G. R. 1127, C. A. . . . .   | 15               |
| Hodgson v. Carlisle Local Board of Health (1857), 8 E. & B. 116 ; 21 J. P. Jo. 421 ; <i>sub nom.</i> R. v. Hodgson, 29 L. T. (o. s.) 246 ; 4 Jur. (N. s.) 160 . . . . .   | 273              |
| ——— v. Railway Passengers' Assurance Co. (1882), 9 Q. B. D. 188, C. A. . . . .  | 19               |
| Homershaw v. Wolverhampton Waterworks Co. (1851), 6 Exch. 137 ; 6 Ry. & Can. Cas. 790 ; 20 L. J. (Ex.) 193 . . . . .  | 19               |
| Hoole U.D.C. v. Fidelity and Deposit Co. of Maryland, [1916] 1 K. B. 25 ; 85 L. J. (K. B.) 239 ; 114 L. T. 358 ; 80 J. P. 118 ; 60 Sol. Jo. 429 ; 14 L. G. R. 390 ; affirmed, [1916] 2 K. B. 568 ; 85 L. J. (K. B.) 1018 ; 115 L. T. 24 ; 80 J. P. 353 ; 14 L. G. R. 950, C. A. . . . . | 21               |
| Horne v. Ivy (1670), 1 Mod. Rep. 18 ; 2 Keb. 567, 604 ; 1 Sid. 441 ; 1 Vent. 47 . . . . .   | 22               |
| Hornsey U.D.C. v. Hennell, [1902] 2 K. B. 73 ; 71 L. J. (K. B.) 479 ; 86 L. T. 423 ; 66 J. P. 613 ; 50 W. R. 521 ; 18 T. L. R. 512 ; 46 Sol. Jo. 452 : 272, 274   |                  |
| Horton v. Colwyn Bay and Colwyn U.D.C., [1908] 1 K. B. 327 ; 77 L. J. (K. B.) 215 ; 98 L. T. 547 ; 72 J. P. 57 ; 24 T. L. R. 220 ; 52 Sol. Jo. 158 ; 6 L. G. R. 211, C. A. . . . .  | 282              |
| Housing Acts, 1925-1930, <i>Re</i> , Errington v. Minister of Health (1934), 99 J. P. 15 . . . . .  | 229              |
| Howard-Flanders v. Maldon Corpn. (1926), 135 L. T. 6 ; 90 J. P. 97 ; 70 Sol. Jo. 544 ; 24 L. G. R. 224, C. A. . . . .   | 279              |
| Howe v. Jones (1885), 1 T. L. R. 461 . . . . .  | 308              |
| Hoyle v. Cornwallis (Lord) (1720), 1 Stra. 387 ; <i>sub nom.</i> Cornwallis (Lord) v. Hoyle, Fortes. Rep. 373 . . . . .   | 70               |
| Hue v. Whiteley, [1929] 1 Ch. 440 ; 98 L. J. (Ch.) 227 ; 140 L. T. 531 . . . . .  | 301              |
| Huggins v. Ward (1873), L. R. 8 Q. B. 521 ; 29 L. T. 33 ; 37 J. P. 405 ; 21 W. R. 914 . . . . .   | 412              |
| Hull, <i>Re</i> (1882), 9 Q. B. D. 689 ; <i>sub nom.</i> <i>Re</i> West Surrey Coroner, 47 J. P. 166 . . . . .  | 68, 69           |
| Humber Conservancy Board v. Bater, [1914] 3 K. B. 449 ; 83 L. J. (K. B.) 1745 ; 111 L. T. 856 ; 6 Tax Cas. 555 . . . . .  | 361              |
| Hurlbatt v. Barnett & Co., [1893] 1 Q. B. 77 ; 62 L. J. (Q. B.) 1 ; 41 W. R. 33 ; 37 Sol. Jo. 8 ; 4 R. 103, C. A. . . . .   | 323              |
| Huth v. Clarke (1890), 25 Q. B. D. 391 ; 59 L. J. (M. C.) 120 ; 63 L. T. 348 ; 55 J. P. 86 ; 38 W. R. 655 ; 6 T. L. R. 373 . . . . .  | 169, 396         |

## I.

|  |     |
|--|-----|
| Ideal Cleaners and Dyers, Ltd. v. West Middlesex Revenue Officer and Assessment Committee (1930), 143 L. T. 483 ; 94 J. P. 139 ; 46 T. L. R. 371 ; 74 Sol. Jo. 319 ; 28 L. G. R. 341 ; (1926-31), 2 B. R. A. 536 . . . . . | 356 |
| Ives and Barker v. Willans, [1894] 2 Ch. 478 ; 63 L. J. (Ch.) 521 ; 70 L. T. 674 ; 42 W. R. 483 ; 10 T. L. R. 439 ; 38 Sol. Jo. 417 ; 7 R. 243, C. A. . . . .  | 19  |

## J.

|   | PAGE |
|---|------|
| Jackson <i>v.</i> Barry Rail. Co., [1893] 1 Ch. 238; 68 L. T. 472; 9 T. L. R. 90; 2 R. 207, C. A.   | 19   |
| Jarvis <i>v.</i> Dean (1826), 3 Bing. 447; 11 Moore (C. P.) 354; 4 L. J. (o. s.) (C. P.) 144  | 209  |
| Jay <i>v.</i> Johnstone, [1893] 1 Q. B. 25; 67 L. T. 655; 57 J. P. 215; 9 T. L. R. 33; 37 Sol. Jo. 48; affirmed, [1893] 1 Q. B. 189; 62 L. J. (Q. B.) 128; 68 L. T. 129; 57 J. P. 309; 41 W. R. 161; 9 T. L. R. 125; 37 Sol. Jo. 114; 4 R. 196, C. A. | 322  |
| Jenkins <i>v.</i> Tucker (1788), 1 Hy. Bl. 90   | 83   |
| Jones <i>v.</i> Mersey Docks. See Mersey Docks <i>v.</i> Cameron, Jones <i>v.</i> Mersey Docks.   |      |

## K.

|   |                |
|---|----------------|
| Kaye (Dewsbury Revenue Officer) <i>v.</i> Burrows and Dewsbury Assessment Committee, [1931] A. C. 454; 100 L. J. (K. B.) 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926-31), 2 B. R. A. 886 | 354, 359       |
| Kaye (Barnsley Revenue Officer) <i>v.</i> Eyre Bros. Ltd., [1931] A. C. 451; 100 L. J. (K. B.) 1; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926-31), 2 B. R. A. 886                             | 352            |
| Kerr, <i>Re</i> , [1894] P. 284; 10 T. L. R. 522  | 259            |
| Kidderminster Corpn. <i>v.</i> Hardwick (1873), L. R. 9 Exch. 13; 43 L. J. (Ex.) 9; 29 L. T. 611; 22 W. R. 160  | 13, 17, 22, 49 |
| Kingston-upon-Hull Corpn. <i>v.</i> Harding, [1892] 2 Q. B. 494; 62 L. J. (Q. B.) 55; 67 L. T. 539; 57 J. P. 85; 41 W. R. 19; 8 T. L. R. 672; 36 Sol. Jo. 624; 4 R. 7, C. A.  | 21             |
| Kirby <i>v.</i> Paignton U.D.C., [1913] 1 Ch. 337; 82 L. J. (Ch.) 198; 108 L. T. 205; 77 J. P. 169; 57 Sol. Jo. 266; 11 L. G. R. 305  | 296, 297, 302  |
| Kirkdale Burial Board <i>v.</i> Liverpool Corpn., [1904] 1 Ch. 829; 73 L. J. (Ch.) 529; 91 L. T. 28; 68 J. P. 289; 52 W. R. 427; 20 T. L. R. 406; 48 Sol. Jo. 396; 2 L. G. R. 763                                     | 148, 189       |
| Kitchen <i>v.</i> Douglas (1915), 85 L. J. (K. B.) 462; 80 J. P. 47; 14 L. G. R. 342; 86, 87  |                |
| Kruse <i>v.</i> Johnson, [1898] 2 Q. B. 91; 67 L. J. (Q. B.) 782; 78 L. T. 647; 62 J. P. 469; 46 W. R. 630; 14 T. L. R. 416; 42 Sol. Jo. 509; 19 Cox, C. C. 103   | 4              |

## L.

|  |          |
|--|----------|
| Laird <i>v.</i> Briggs (1881), 19 Ch. D. 22; 45 L. T. 238, C. A.   | 322      |
| Lakeman <i>v.</i> Mountstephen (1874), L. R. 7 H. L. 17; 43 L. J. (Q. B.) 188; 30 L. T. 437; 22 W. R. 617  | 28       |
| Lamprell <i>v.</i> Billericay Union (1849), 3 Exch. 283; 18 L. J. (Ex.) 282; 12 L. T. (o. s.) 533; 13 J. P. 235  | 18       |
| Lancashire JJ. <i>v.</i> Stretford Overseers (1858), E. B. & E. 225; 4 Jur. (N. S.) 1274; <i>sub nom.</i> R. v. Lancashire JJ., 27 L. J. (M. C.) 209; 31 L. T. (O. S.) 116; <i>sub nom.</i> Stretford Overseers <i>v.</i> Lancashire JJ., 22 J. P. 705 | 273      |
| Lapish <i>v.</i> Braithwaite, [1926] A. C. 275; 95 L. J. (K. B.) 406; 134 L. T. 481; 90 J. P. 65; 42 T. L. R. 263; 70 Sol. Jo. 365; 24 L. G. R. 125  | 101, 183 |
| Law <i>v.</i> Redditch Local Board, [1892] 1 Q. B. 127; 61 L. J. (Q. B.) 172; 66 L. T. 76; 56 J. P. 292; 8 T. L. R. 90; 36 Sol. Jo. 90, C. A.  | 20       |
| Law Society <i>v.</i> United Service Bureau, Ltd., [1934] 1 K. B. 343; 103 L. J. (K. B.) 81; 150 L. T. 159; 98 J. P. 33; 50 T. L. R. 77; 31 L. G. R. 146   | 265      |
| Lawford <i>v.</i> Billericay R.D.C., [1903] 1 K. B. 772; 72 L. J. (K. B.) 554; 88 L. T. 317; 67 J. P. 245; 51 W. R. 630; 19 T. L. R. 322; 47 Sol. Jo. 366; 1 L. G. R. 535, C. A.   | 15       |
| Lawson <i>v.</i> Wallasey Local Board (1882), 11 Q. B. D. 229; 52 L. J. (Q. B.) 302; 47 L. T. 625; affirmed (1883), 48 L. T. 507; 47 J. P. 437, C. A.  | 19       |
| Lee Conservancy Board <i>v.</i> R. (1931), 39 Lloyd L.R. 47  | 362      |
| Leeds Revenue Officer <i>v.</i> Leeds Second Co-operative Society, Ltd. (1931), English Derating Appeals, Vol. II., 114  | 361      |
| <i>v.</i> Lyons (J.) & Co., Ltd. (1931), English Derating Appeals, Vol. II., 145   | 356      |

|  | PAGE     |
|--|----------|
| Leicester Guardians v. Trollope (1911), 75 J. P. 197; 2 Hudson's B. C., 4th ed., 419   | 16       |
| Leith Harbour and Docks Commissioners v. Inspector of the Poor (1866), L. R. 1 Sc. & Div. 17   | 272      |
| Lewis v. Durham Union (1904), 90 L. T. 383; 68 J. P. 220; 20 T. L. R. 227; 2 L. G. R. 533; Ryde & K. Rat. App. 357   | 273      |
| Lingké v. Christchurch Corp., [1912] 3 K. B. 595; 82 L. J. (K. B.) 37; 107 L. T. 476; 76 J. P. 433; 28 T. L. R. 536; 56 Sol. Jo. 735; 10 L. G. R. 773, C. A.   | 279, 281 |
| Lipton, Ltd. v. Burton, [1932] 1 K. B. 204; 100 L. J. (K. B.) 529; 145 L. T. 476; 95 J. P. 211; 47 T. L. R. 565; 29 L. G. R. 642; (1926-31), 2 B. R. A. 940, C. A.   | 360      |
| Local Government Act, 1888, <i>Re</i> , <i>Ex parte</i> L.C.C., [1892] 1 Q. B. 33; 61 L. J. (Q. B.) 27; 65 L. T. 614; 56 J. P. 279; 8 T. L. R. 24 . . . . .  | 77       |
| <i>Re</i> , <i>Ex parte</i> Somerset County Council (1889), 58 L. J. (Q. B.) 513; 61 L. T. 512; 54 J. P. 182; 5 T. L. R. 712 . . . . .   | 169      |
| Lofthouse (Langbaugh Revenue Officer) v. Langbaugh Assessment Committee and Bainbridge (A.) Ltd., [1931] 1 K. B. 385; 100 L. T. (K. B.) 1; 143 L. T. 650; 46 T. L. R. 601; 74 Sol. Jo. 629; (1926-31), 2 B. R. A. 742, C. A. | 354, 360 |
| L.C.C., <i>Ex parte</i> . <i>See</i> Local Government Act, 1888, <i>Re</i> , <i>Ex parte</i> L.C.C.  |          |
| <i>v.</i> A.-G., [1902] A. C. 165; 71 L. J. (Ch.) 268; 86 L. T. 161; 66 J. P. 340; 50 W. R. 497; 18 T. L. R. 298 . . . . .   | 163      |
| <i>v.</i> Bermondsey Borough Council, [1915] 3 K. B. 305; 84 L. J. (K. B.) 1699; 113 L. T. 743; 79 J. P. 449; 13 L. G. R. 987 . . . . .  | 317      |
| <i>v.</i> Davis, L.C.C. <i>v.</i> Rowton House Co., Ltd. (1897), 77 L. T. 693; 62 J. P. 68; 14 T. L. R. 113; 42 Sol. Jo. 115 . . . . .   | 45       |
| <i>v.</i> Herring, [1894] 2 K. B. 522; 58 J. P. 721; 10 R. 455; <i>sub nom.</i> R. <i>v.</i> Herring, 63 L. J. (M. C.) 230 . . . . .   | 289      |
| <i>v.</i> Hobbs (1896), 75 L. T. 687; 61 J. P. 85; 45 W. R. 270; 41 Sol. Jo. 143 . . . . .   | 287, 289 |
| <i>v.</i> Jones, [1912] 2 K. B. 504; 81 L. J. (K. B.) 948; 106 L. T. 872; 76 J. P. 293; 10 L. G. R. 471 . . . . .  | 287, 289 |
| <i>v.</i> Rowton House Co., Ltd. <i>See</i> L.C.C. <i>v.</i> Davis, L.C.C. <i>v.</i> Rowton House Co., Ltd.  |          |
| Longfield Parish Council <i>v.</i> Robson (1913), 29 T. L. R. 357 . . . . .  | 49       |
| Lowestoft Manor and Great Eastern Rail. Co., <i>Re</i> , <i>Ex parte</i> Reeve (1883), 24 Ch. D. 253; 52 L. J. (Ch.) 912; 49 L. T. 523; 32 W. R. 309, C. A.  | 274      |
| Ludlow Corp. <i>v.</i> Charlton (1840), 6 M. & W. 815; 10 L. J. (Ex.) 75; 4 Jur. 657 . . . . .   | 15       |
| Lurgan U.D.C. <i>v.</i> Moore and Johnston, [1906] 1 I. R. 599 . . . . .   | 117      |
| Lyons (J.) & Co., Ltd. <i>v.</i> Keating, [1931] 2 K. B. 535; 100 L. J. (K. B.) 513; 145 L. T. 263; 95 J. P. 150; 47 T. L. R. 442; 75 Sol. Jo. 489; 29 L. G. R. 407; 29 Cox, C. C. 323 . . . . .                             | 252      |

## M.

|  |               |
|--|---------------|
| Macbeth & Co. <i>v.</i> Chislett, [1910] A. C. 220; 79 L. J. (K. B.) 376; 102 L. T. 82; 26 T. L. R. 268; <i>sub nom.</i> Chislett <i>v.</i> Macbeth & Co., Ltd., 54 Sol. Jo. 268 . . . . . | 322           |
| Mackalley's Case (1611), 9 Co. Rep. 61 b, 65 a; Cro. Jac. 279; <i>sub nom.</i> Anon., Jenk. 291 . . . . .  | 70            |
| MacLean <i>v.</i> Laidlaw, [1909] S. C. 68; 4 Sc. L. R. 877; 2 S. L. T. 140 . . . . .  | 412           |
| Macpherson <i>v.</i> Scottish Rights of Way and Recreation Society (1883), 13 App. Cas. 744 . . . . .  | 300           |
| Magdalen College, Cambridge, Case (1615), 11 Co. Rep. 66 b; <i>sub nom.</i> Warren v. Smith, Magdalen College Case, 1 Roll. Rep. 151 . . . . .   | 269           |
| Manchester Corp. <i>v.</i> Williams, [1891] 1 Q. B. 94; 60 L. J. (Q. B.) 23; 63 L. T. 805; 54 J. P. 712; 39 W. R. 302; 7 T. L. R. 9 . . . . .  | 306           |
| Manchester, Eastern Division Case (1892), 4 O'M. & H. 120; Day, 153 . . . . .  | 92            |
| Mann, <i>Ex parte</i> . <i>See</i> R. <i>v.</i> Ely JJ., <i>Ex parte</i> Mann.   |               |
| <i>v.</i> Brodie (1885), 10 App. Cas. 378 . . . . .  | 295, 296, 299 |
| Mapey <i>v.</i> Baker (1909), 73 J. P. 289; 53 Sol. Jo. 429; 7 L. G. R. 636, C. A. . . . .   | 308           |
| Margerison, <i>Ex parte</i> . <i>See</i> R. <i>v.</i> Haslewood, <i>Ex parte</i> Margerison.   |               |
| Marshall <i>v.</i> Queenborough Corp. (1823), 1 Sim. & St. 520 . . . . .   | 16            |

|  | PAGE                    |
|--|-------------------------|
| Mason <i>v.</i> Bolton's Library, Ltd., [1913] 1 K. B. 83; 107 L. T. 673; <i>sub nom.</i> Chetwynd's Trustee <i>v.</i> Boltons Library, Ltd., 82 L. J. (K. B.) 217; 20 Mans. 1, C. A. . . . .                                      | 322                     |
| Maund <i>v.</i> Monmouthshire Canal Co. (1842), 4 Man. & G. 452; Car. & M. 606; 2 Dowl. (N. s.) 113; 3 Ry. & Can. Cas. 159; 5 Scott (N. R.) 457; 11 L. J. (C. P.) 317; 6 Jur. 932 . . . . .  | 264                     |
| Mayo <i>v.</i> Seaton U.D.C. (1903), 68 J. P. 7; 2 L. G. R. 127 . . . . .  | 284                     |
| Melbourne Banking Corp. <i>v.</i> Brougham (1879), 4 App. Cas. 156; 48 L. J. (P. C.) 12; 40 L. T. 1 . . . . .  | 15                      |
| Melliss <i>v.</i> Shirley Local Board (1885), 14 Q. B. D. 911; 54 L. J. (Q. B.) 408; 52 L. T. 544; 1 T. L. R. 427; reversed (1886), 16 Q. B. D. 446; 55 L. J. (Q. B.) 143; 53 L. T. 810; 50 J. P. 214; 34 W. R. 187, C. A. . . . . | 22                      |
| Mellor <i>v.</i> Warden (1896), 40 Sol. Jo. 567 . . . . .  | 286, 287                |
| Mercer <i>v.</i> Woodgate (1869), L. R. 5 Q. B. 26; 10 B. & S. 833; 39 L. J. (M. C.) 21; 21 L. T. 458; 34 J. P. 261; 18 W. R. 116 . . . . .  | 303, 304                |
| Mersey Docks <i>v.</i> Cameron, Jones <i>v.</i> Mersey Docks (1865), 11 H. L. Cas. 443; 20 C. B. (N. s.) 56; 6 New Rep. 378; 35 L. J. (M. C.) 1; 12 L. T. 643; 29 J. P. 483; 11 Jur. (N. s.) 746; 13 W. R. 1069 . . . . .          | 269, 272                |
| Mersey Docks and Harbour Board Trustees <i>v.</i> Gibbs (1866), L. R. 1 H. L. 93; 11 H. L. Cas. 686; 35 L. J. (Ex.) 225; 14 L. T. 677; 30 J. P. 467; 12 Jur. (N. s.) 571; 14 W. R. 372; 2 Mar. L. C. 353 . . . . .                 | 280                     |
| Metropolitan Saloon Omnibus Co. <i>v.</i> Hawkins (1859), 4 H. & N. 87; 28 L. J. (Ex.) 201; 32 L. T. (o. s.) 283; 5 Jur. (N. s.) 226; 7 W. R. 265 . . . . .  | 306                     |
| Middlesex County Council <i>v.</i> Kingsbury U.D.C., [1909] 1 K. B. 554; 78 L. J. (K. B.) 442; 100 L. T. 421; 73 J. P. 153; 25 T. L. R. 256; 53 Sol. Jo. 227; 7 L. G. R. 463, C. A. . . . .  | 116                     |
| <i>v.</i> St. George's Union Assessment Committee, [1897] 1 Q. B. 64; 66 L. J. (Q. B.) 101; 75 L. T. 464; 45 W. R. 214; 13 T. L. R. 61; 41 Sol. Jo. 79; Ryde & K. Rat. App. 153, C. A. . . . .                                     | 273                     |
| Middlesex Deputy Coroner, <i>Ex parte</i> (1861), 6 H. & N. 501; 30 L. J. (Ex.) 77; 3 L. T. 754; 7 Jur. (N. s.) 103; 9 W. R. 281 . . . . .   | 69                      |
| Middleton and Young's Contract, <i>Re</i> , [1929] W. N. 70; 67 L. Jo. 274; 167 L. T. Jo. 244 . . . . .  | 50                      |
| Midland Motor Showrooms, Ltd. <i>v.</i> Newman, [1929] 2 K. B. 256; 98 L. J. (K. B.) 490; 141 L. T. 230; 45 T. L. R. 499, C. A. . . . .  | 21                      |
| Midland Rail. Co. <i>v.</i> Freeman (1884), 12 Q. B. D. 629; 53 L. J. (M. C.) 79; 48 J. P. 660; 32 W. R. 830 . . . . .   | 411                     |
| Mildred <i>v.</i> Weaver (1862), 3 F. & F. 30; 6 L. T. 225 . . . . .   | 302                     |
| Monighetti <i>v.</i> Wandsworth Borough Council (1908), 73 J. P. 91 . . . . .  | 55                      |
| Moon (Lambeth Revenue Officer) <i>v.</i> L.C.C., [1931] A. C. 151; 100 L. J. (K. B.) 153; 144 L. T. 410; 95 J. P. 64; 47 T. L. R. 154; 29 L. G. R. 131; (1926-31), 2 B. R. A. 573 . . . . .  | 350, 351, 352, 356, 358 |
| Morgan <i>v.</i> Larivière (1875), L. R. 7 H. L. 423; 44 L. J. (Ch.) 457; 32 L. T. 41; 23 W. R. 537 . . . . .  | 19                      |
| Moser <i>v.</i> Ambleside U.D.C. (1925), 89 J. P. 118; 23 L. G. R. 533, C. A. . . . .  | 300, 302                |
| Moss & Co., Ltd. <i>v.</i> Swansea Corpn. (1910), 74 J. P. 351 . . . . .   | 18                      |

## N.

|  |     |
|--|-----|
| Nairn <i>v.</i> St. Andrews University, [1909] A. C. 147; 78 L. J. (P. C.) 54; 100 L. T. 96; 25 T. L. R. 160 . . . . .   | 322 |
| Nash <i>v.</i> Hollinshead, [1901] 1 K. B. 700; 70 L. J. (K. B.) 571; 84 L. T. 483; 65 J. P. 357; 49 W. R. 424; 17 T. L. R. 352; 3 W. C. C. 125, C. A. . . . .   | 358 |
| National Savings Bank Association, Ltd., <i>Re</i> (1866), 1 Ch. App. 547; 35 L. J. (Ch.) 808; 15 L. T. 128; 44 W. R. 1005 . . . . .                             | 323 |
| Nethaway <i>v.</i> Brewer, [1931] 2 K. B. 459; 100 L. J. (K. B.) 524; 145 L. T. 191; 95 J. P. 159; 75 Sol. Jo. 359; 29 L. G. R. 489; 29 Cox, C. C. 305 . . . . . | 406 |
| Newcastle-upon-Tyne Corpn. <i>v.</i> A.-G., [1892] A. C. 568; 62 L. J. (Q. B.) 72; 67 L. T. 728; 56 J. P. 836; 1 R. 31 . . . . .                                 | 47  |
| Newell <i>v.</i> Starkie (1919), 89 L. J. (P. C.) 1; 83 J. P. 113; 17 L. G. R. 369 . . . . .   | 114 |
| Newhaven U.D.C., <i>Ex parte</i> . See R. <i>v.</i> Minister of Health, <i>Ex parte</i> Newhaven U.D.C.  |     |
| Nichol <i>v.</i> Fearby, [1923] 1 K. B. 480; 92 L. J. (K. B.) 280; 128 L. T. 662; 87 J. P. 70; 39 T. L. R. 175; 67 Sol. Jo. 335; 21 L. G. R. 157 . . . . .       | 95  |
| Nicholson <i>v.</i> Jackson (1921), 90 L. J. (K. B.) 1121; 125 L. T. 802; 85 J. P. 225; 37 T. L. R. 887; 65 Sol. Jo. 713; 19 L. G. R. 512 . . . . .              | 388 |

|   | PAGE     |
|---|----------|
| North London Rail. Co. v. St. Mary, Islington, Vestry (1872), 27 L. T. 672 ; 37 J. P. 341 ; 21 W. R. 226 . . . . .  | 298, 299 |
| North Metropolitan Tramways Co. v. L.C.C., [1898] 2 Ch. 145 ; 67 L. J. (Ch.) 449 ; 78 L. T. 711 ; 62 J. P. 488 ; 46 W. R. 554 ; 14 T. L. R. 414 . . . . .   | 115      |
| North Staffordshire Rail. Co. v. Waters (1913), 110 L. T. 237 ; 78 J. P. 116 ; 30 T. L. R. 121 ; 24 Cox, C. C. 28 ; 12 L. G. R. 289 . . . . .   | 406      |
| Nott and Cardiff Corpn., <i>Re</i> , [1918] 2 K. B. 146 ; 118 L. T. 487 ; 82 J. P. 181 ; 16 L. G. R. 253, C. A. ; on appeal, <i>sub nom.</i> Brodie v. Cardiff Corpn., [1919] A. C. 337 ; 88 L. J. (K. B.) 609 ; 120 L. T. 417 ; 83 J. P. 77 ; 17 L. G. R. 65 . . . . . | 18       |
| Nuttall v. Manchester Corpn. (1892), 8 T. L. R. 513 . . . . .   | 19       |
| — v. Toulmin & Sons (1912), 76 J. P. 113 . . . . .  | 310      |
| Nutter v. Accrington Local Board of Health (1878), 4 Q. B. D. 375 ; 48 L. J. (Q. B.) 487 ; 40 L. T. 802 ; 43 J. P. 635, C. A. ; affirmed <i>sub nom.</i> Accrington Corpn. v. Nutter (1880), 43 L. T. 710 . . . . .   | 281      |

## O.

|  |            |
|--|------------|
| Oakey v. Stretton (1884), 48 J. P. 709 . . . . .   | 412, 413   |
| O'Duffy v. Jaffe, [1904] 2 I. R. 27 ; 37 I. L. T. 236 . . . . .                            | 264        |
| Ormerod v. Rochdale Corpn. (1898), 62 J. P. 153 ; 4 L. G. R. 65, n. . . . .                | 398        |
| Owen v. De Winton (1894), 58 J. P. 833 ; 10 T. L. R. 534, C. A . . . . .                   | 304        |
| Oxford Corpn. v. Crow, [1893] 3 Ch. 535 ; 69 L. T. 228 ; 42 W. R. 200 ; 8 R. 279 . . . . . | 13, 17, 22 |

## P.

|   |               |
|---|---------------|
| Pasmore v. Oswaldtwistle U.D.C., [1898] A. C. 387 ; 67 L. J. (Q. B.) 635 ; 78 L. T. 569 ; 62 J. P. 628 ; 14 T. L. R. 368 . . . . .  | 313           |
| Paul v. James (1841), 1 Q. B. 832 ; 1 Gal. & Dav. 316 ; 10 L. J. (Q. B.) 246 . . . . .  | 302           |
| Peaks, Gunston and Tee, Ltd. v. Ward, [1902] 2 K. B. 1 ; 71 L. J. (K. B.) 656 ; 87 L. T. 51 ; 66 J. P. 774 ; 18 T. L. R. 538 ; 20 Cox, C. C. 279 . . . . .  | 264           |
| Pearson v. Holborn Union Assessment Committee, [1893] 1 Q. B. 389 ; 62 L. J. (M. C.) 77 ; 68 L. T. 351 ; 57 J. P. 169 ; 9 T. L. R. 275 ; 5 R. 290 ; Ryde, Rat. App. (1891-93) 303 . . . . .   | 273           |
| Pearson & Son, Ltd. v. Dublin Corpn., [1907] A. C. 351 ; 77 L. J. (P. C.) 1 ; 97 L. T. 645 . . . . .  | 17            |
| Performing Right Society, Ltd. v. Bradford Corpn. (1921), MacGillivray's Copyright Cases, 309 . . . . .   | 59            |
| — v. Hammond's Bradford Brewery Co., Ltd., [1934] Ch. 121 ; 103 L. J. (Ch.) 210 ; 150 L. T. 119 ; 50 T. L. R. 16 . . . . .  | 59            |
| Pharmaceutical Society v. London and Provincial Supply Association, Ltd. (1880), 5 App. Cas. 857 ; 49 L. J. (Q. B.) 736 ; 43 L. T. 389 ; 45 J. P. 20 ; 28 W. R. 957 . . . . .   | 264           |
| Phelps and Woodford v. Upton Snodsbury Highway Board (1885), 49 J. P. 408 ; 1 T. L. R. 425 ; 1 Cab. & El. 524 . . . . .   | 16, 23        |
| Pickin (Langbaugh Revenue Officer) v. Langbaugh Assessment Committee and Cheyne (Robert) & Co., Ltd., [1931] 1 K. B. 385 ; 100 L. J. (K. B.) 1 ; 143 L. T. 650 ; 46 T. L. R. 601 ; 74 Sol. Jo. 629 ; (1926-31), 2 B. R. A. 742, C. A. . . . . | 360           |
| Pittard v. Oliver, [1891] 1 Q. B. 474 ; 60 L. J. (Q. B.) 219 ; 64 L. T. 758 ; 55 J. P. 100 ; 39 W. R. 311 ; 7 T. L. R. 188, C. A. . . . .   | 309           |
| Place v. Rawtenstall Corpn. (1916), 86 L. J. (K. B.) 90 ; 80 J. P. 433 ; 60 Sol. Jo. 680 ; 14 L. G. R. 901, C. A. . . . .   | 281           |
| Plymouth Corpn. and Walter, <i>Re</i> , [1918] 2 Ch. 354 ; 87 L. J. (Ch.) 635 ; 119 L. T. 626 ; 82 J. P. 273 ; 16 L. G. R. 793, C. A. . . . .   | 81            |
| Poole v. Huskinson (1843), 11 M. & W. 827 . . . . .   | 296, 301, 302 |
| Poplar Revenue Officer v. Poplar Assessment Committee and Liberty Oils, Ltd. (1930), 99 L. J. (K. B.) 510 ; 143 L. T. 490 ; 94 J. P. 142 ; 46 T. L. R. 428 ; 74 Sol. Jo. 320 ; 28 L. G. R. 327 ; (1926-31), 2 B. R. A. 502 ; 355, 359         |               |
| Poplar Revenue Officer (Barton) v. Union Lighterage Co., Ltd., [1931] 1 K. B. 385 ; 100 L. J. (K. B.) 1 ; 143 L. T. 650 ; 94 J. P. 177 ; 46 T. L. R. 601 ; 74 Sol. Jo. 581 ; 28 L. G. R. 550 ; (1926-31), 2 B. R. A. 742, C. A. 358, 361      |               |
| Porter, Amphlett and Jones, <i>Re</i> , [1912] 2 Ch. 98 ; 81 L. J. (Ch.) 544 ; 107 L. T. 40 ; 56 Sol. Jo. 521 . . . . .   | 117           |

|  | PAGE |
|--|------|
| Portsmouth Corpn. v. Smith (1883), 13 Q. B. D. 184; 53 L. J. (Q. B.) 92; 50 L. T. 308; 48 J. P. 404, C. A.; affirmed (1885), 10 App. Cas. 364; 54 L. J. (Q. B.) 473; 53 L. T. 394; 49 J. P. 676 . . . . .                        | 321  |
| Potteries Electric Traction Co., Ltd. v. Bailey (Stoke-on-Trent Revenue Officer). See Bailey (Stoke-on-Trent Revenue Officer) v. Potteries Electric Traction Co., Ltd.   |      |
| Powell Duffryn Steam Coal Co. v. Glamorganshire Standing Joint Committee. See Glamorgan Coal Co. v. Glamorganshire Standing Joint Committee, Powell Duffryn Steam Coal Co. v. Same.  |      |
| Powers v. Bathurst (1880), 49 L. J. (Ch.) 294; 42 L. T. 123; 28 W. R. 390 . . . . .  | 297  |
| Price, <i>Ex parte</i> . See R. v. Bedwellty U.D.C., <i>Ex parte</i> Price.  |      |
| Pritchard (Cardiff Revenue Officer) v. Lewis (William) & Sons, [1931] 1 K. B. 386; 100 L. J. (K. B.) 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 661; 28 L. G. R. 550; (1926-31), 2 B. R. A. 742, C. A. . . . . | 359  |
| Public Works Commissioner (Cape Colony) v. Logan, [1903] A.C. 355; 72 L. J. (P. C.) 91; <i>sub nom.</i> Smart (Public Works Commissioner) v. Logan, 88 L. T. 779 . . . . .   | 278  |
| Purcell v. Sowler (1877), 2 C. P. D. 215; 46 L. J. (Q. B.) 308; 36 L. T. 416; 41 J. P. 789; 25 W. R. 362, C. A. . . . .  | 309  |
| Purfleet U.D.C., <i>Ex parte</i> . See R. v. Minister of Health, <i>Ex parte</i> Purfleet U.D.C.   |      |

## R.

|  |         |
|--|---------|
| R. v. Allen, [1912] 1 K. B. 365; 81 L. J. (K. B.) 258; 106 L. T. 101; 76 J. P. 95; 28 T. L. R. 145; 22 Cox, C. C. 669 . . . . .  | 124     |
| — v. Ascanio Puck & Co. and Paice (1912), 76 J. P. 487; 29 T. L. R. 11; 11 L. G. R. 136 . . . . .  | 265     |
| — v. Barr (1814), 4 Camp. 16 . . . . .   | 297     |
| — v. Bedwellty U.D.C., <i>Ex parte</i> Price, [1934] 1 K. B. 333; 103 L. J. (K. B.) 152; 150 L. T. 180; 98 J. P. 25; 50 T. L. R. 91; 31 L. G. R. 430 . . . . . 61, 137, 184, 185                       |         |
| — v. Birmingham and Gloucester Rail. Co. (1842), 3 Q. B. 223; 3 Ry. & Can. Cas. 148; 2 Gal. & Dav. 236; 11 L. J. (M. C.) 134; 6 Jur. 804 . . . . .   | 263     |
| — v. Bliss (1837), 7 Ad. & El. 550; 2 Nev. & P. (K. B.) 464; Will. Woll. & Dav. 624; 7 L. J. (Q. B.) 4; 1 Jur. 959 . . . . .   | 302     |
| — v. Bradford-on-Avon R.D.C. (1908), 99 L. T. 89; 72 J. P. 348; 6 L. G. R. 847 . . . . .   | 133     |
| — v. Bridgewater Corpn. (1839), 10 Ad. & El. 281; 2 Per. & Dav. 558 . . . . .  | 311     |
| — v. Broke (1859), 1 F. & F. 514 . . . . .   | 301     |
| — v. Buckingham (Marquis) (1815), 4 Camp. 189 . . . . .  | 304     |
| — v. Butcher (1900), 64 J. P. 808 . . . . .  | 76      |
| — v. Byers (1907), 71 J. P. 205 . . . . .  | 87, 260 |
| — v. Carter (1876), 45 L. J. (Q. B.) 711; 34 L. T. 849; 40 J. P. 775; 24 W. R. 882; 13 Cox, C. C. 230 . . . . .  | 75      |
| — v. Chorley (1848), 12 Q. B. 515; 12 L. T. (o. s.) 371; 13 J. P. 136; 12 Jur. 822; 3 Cox, C. C. 262 . . . . .   | 299     |
| — v. Clark (1883), 15 Cox, C. C. 171 . . . . .   | 87      |
| — v. Clerk (1702), 1 Salk. 377; 7 Mod. Rep. 16; <i>sub nom.</i> Anon., 7 Mod. Rep. 10 . . . . .  | 68      |
| — v. Cory Bros. & Co., [1927] 1 K. B. 810; 96 L. J. (K. B.) 761; 136 L. T. 735; 28 Cox, C. C. 346 . . . . .  | 265     |
| — v. Daily Mirror Newspapers, Ltd., [1922] 2 K. B. 530; 91 L. J. (K. B.) 712; 127 L. T. 218; 86 J. P. 151; 38 T. L. R. 531; 66 Sol. Jo. 559; 27 Cox, C. C. 225; 16 Cr. App. Rep. 131, C. C. A. . . . . | 265     |
| — v. Darlington Local Board of Health (1865), 6 B. & S. 562; 6 New Rep. 178; 35 L. J. (Q. B.) 45; 29 J. P. 419; 13 W. R. 789 . . . . .   | 281     |
| — v. Divine, <i>Ex parte</i> Walton, [1930] 2 K. B. 29; 99 L. J. (K. B.) 433; 143 L. T. 235; 94 J. P. 129; 46 T. L. R. 321; 28 L. G. R. 283 . . . . .  | 75      |
| — v. East Mark (Inhabitants) (1848), 11 Q. B. 877; 3 New Mag. Cas. 36; 17 L. J. (Q. B.) 177; 11 L. T. (o. s.) 63; 12 J. P. 504; 12 Jur. 332; 3 Cox, C. C. 60 . . . . .                                 | 297     |
| — v. Edmundson (1859), 2 E. & E. 77; 28 L. J. (M. C.) 213; 33 L. T. (o. s.) 237; 23 J. P. 710; 5 Jur. (N. S.) 1351; 7 W. R. 565; 8 Cox, C. C. 212 . . . . .  | 323     |
| — v. Edwards (1895), 59 J. P. 88 . . . . .   | 99      |

|   | PAGE     |
|---|----------|
| R. v. Ely, JJ., <i>Ex parte</i> Mann (1928), 93 J. P. 45; 45 T. L. R. 92; 72 Sol. Jo. 861; 27 L. G. R. 35 . . . . .   | 119      |
| — v. Essex JJ. (1882), 46 J. P. Jo. 724 . . . . .   | 243      |
| — v. Evans-Jones. <i>See</i> R. v. Jenkins, R. v. Evans-Jones.  |          |
| — v. Feist (1858), Dears. & B. 590; 27 L. J. (M. C.) 164; 31 L. T. (o. s.) 266; 22 J. P. 322; 4 Jur. (N. S.) 541; 6 W. R. 546; 8 Cox, C. C. 18 . . . . .  | 84       |
| — v. Ferrand (1819), 3 B. & Ald. 260; 1 Chit. 745 . . . . .   | 72       |
| — v. Fox (1841), 2 Q. B. 246; <i>sub nom. Re Wakefield (Bailiff)</i> , 1 Gal. & Dav. 566; 11 L. J. (Q. B.) 41; <i>sub nom. Re Jewison</i> , 5 Jur. 989 . . . . .  | 83       |
| — v. French (1879), 4 Q. B. D. 507; 48 L. J. (M. C.) 175; 41 L. T. 63; 43 J. P. 699; 28 W. R. 118, C. A. . . . .  | 305      |
| — v. Fuller (1855), 8 E. & B. 365, n.; 25 L. T. (o. s.) 141; 19 J. P. 709; 4 Jur. (N. S.) 189, n.; 3 W. R. 478; 3 C. L. R. 872 . . . . .  | 273      |
| — v. Godstone R.D.C., [1911] 2 K. B. 465; 80 L. J. (K. B.) 1184; 105 L. T. 207; 75 J. P. 413; 27 T. L. R. 424; 9 L. G. R. 665 . . . . .   | 133, 184 |
| — v. Great North of England Rail. Co. (1846), 9 Q. B. 315; 16 L. J. (M. C.) 16; 7 L. T. (o. s.) 468; 11 J. P. 21; 10 Jur. 755; 2 Cox, C. C. 70 . . . . .  | 264      |
| — v. Gurney (1867), 31 J. P. 584; 10 Cox, C. C. 550 . . . . .   | 98       |
| — v. Hammond (J. G.) & Co., Ltd., [1914] 2 K. B. 866; 83 L. J. (K. B.) 1221; 111 L. T. 206; 30 T. L. R. 491; 58 Sol. Jo. 513 . . . . .  | 265      |
| — v. Hampstead Borough Council (1917), 116 L. T. 213; 81 J. P. 65; 33 T. L. R. 157; 15 L. G. R. 309 . . . . .   | 133, 184 |
| — v. Harding (1908), 25 T. L. R. 139; 1 Cr. App. Rep. 219, C. C. A. . . . .   | 74       |
| — v. Haslewood, <i>Ex parte Margerison</i> , [1926] 2 K. B. 468; 95 L. J. (K. B.) 975; 136 L. T. 276; 90 J. P. 158; 42 T. L. R. 746; 70 Sol. Jo. 906; 24 L. G. R. 505 . . . . .                               | 72, 75   |
| — v. Haynes (1614), 12 Co. Rep. 113; 2 East, P. C. 652 . . . . .  | 83       |
| — v. Hendon R.D.C., <i>Ex parte Chorley</i> , [1933] 2 K. B. 696; 102 L. J. (K. B.) 658; 149 L. T. 535; 97 J. P. 210; 49 T. L. R. 482; 31 L. G. R. 332 . . . . .  | 101, 182 |
| — v. Howard (1910), 6 Cr. App. Rep. 17, C. C. A. . . . .  | 123      |
| — v. Hudson (1732), 2 Stra. 909 . . . . .   | 299      |
| — v. Ingham (1864), 5 B. & S. 257; 4 New Rep. 141; 33 L. J. (Q. B.) 183; 10 L. T. 456; 28 J. P. 580; 10 Jur. (N. S.) 968; 12 W. R. 793; 9 Cox, C. C. 508 . . . . .  | 71, 75   |
| — v. Jenkins, R. v. Evans-Jones (1923), 87 J. P. 115; 39 T. L. R. 458; 67 Sol. Jo. 707; 17 Cr. App. Rep. 121, C. C. A. . . . .  | 99       |
| — v. Jones (1921), 16 Cr. App. Rep. 52, C. C. A. . . . .  | 124      |
| — v. Kent County Treasurer (1889), 22 Q. B. D. 603; 58 L. J. (M. C.) 71; 60 L. T. 426; 53 J. P. 279; 37 W. R. 619; 16 Cox, C. C. 583 . . . . .  | 84       |
| — v. Kershaw (1856), 20 J. P. 741 . . . . .   | 321      |
| — v. Lancaster and Worrall (1890), 16 Cox, C. C. 737 . . . . .  | 98       |
| — v. Leake (Inhabitants) (1833), 5 B. & Ad. 469; 2 Nev. & M. (K. B.) 583; 1 Nev. & M. (M. C.) 544 . . . . .   | 297, 298 |
| — v. Lefroy (1873), L. R. 8 Q. B. 134; 37 J. P. 56; <i>sub nom. Ex parte Jolliffe</i> , 42 L. J. (Q. B.) 121; <i>sub nom. Re County Court Judge, Ex parte Jolliffe</i> , 28 L. T. 132; 21 W. R. 332 . . . . . | 70       |
| — v. Liverpool Corp. (1872), 41 L. J. (Q. B.) 175; 20 W. R. 389; <i>sub nom. Willmer v. Liverpool Corp.</i> , 26 L. T. 101 . . . . .  | 310, 311 |
| — v. Liverpool JJ. (1883), 11 Q. B. D. 638; 52 L. J. (M. C.) 114; <i>sub nom. R. v. Lancashire JJ.</i> , 49 L. T. 244; 32 W. R. 20; <i>sub nom. R. v. Lawrence</i> , 47 J. P. 596, C. A. . . . .              | 323      |
| — v. Lloyd (1808), 1 Camp. 260 . . . . .  | 302      |
| — v. L.C.C., [1914] 3 K. B. 310; 83 L. J. (K. B.) 1381; 111 L. T. 254; 78 J. P. 302; 30 T. L. R. 504; 24 Cox, C. C. 263; 12 L. G. R. 1210 . . . . .   | 121      |
| — v. Lordsmere (Inhabitants) (1850), 15 Q. B. 689; 4 New Sess. Cas. 205; 19 L. J. (M. C.) 215; 16 L. T. (o. s.) 123; 14 J. P. 704; 15 Jur. 82 . . . . .   | 305      |
| — v. McCann (1868), L. R. 3 Q. B. 141, 677; 9 B. & S. 33; 37 L. J. (M. C.) 123; 19 L. T. 115; 32 J. P. 579; 16 W. R. 985 . . . . .  | 269      |
| — v. McCluskey (1921), 15 Cr. App. Rep. 148, C. C. A. . . . .   | 123      |
| — v. Mallet and Chilcote (1846), 6 L. T. (o. s.) 369; 1 Cox, C. C. 336 . . . . .  | 70       |
| — v. Manchester Overseers (1854), 3 E. & B. 336; 23 L. J. (M. C.) 48; 22 L. T. (o. s.) 241; 18 J. P. 218; 18 Jur. 267; 2 C. L. R. 974 . . . . .   | 273      |
| — v. Minister of Health, <i>Ex parte Newhaven U.D.C.</i> (1933), 31 L. G. R. 372 . . . . .  | 160, 233 |
| — v. —————, <i>Ex parte Purfleet U.D.C.</i> (1934), 98 J. P. 275; 50 T. L. R. 427; 32 L. G. R. 221; on appeal, 151 L. T. 507; 98 J. P. 427; 50 T. L. R. 532; 78 Sol. Jo. 633, C. A. . . . .                   | 221, 231 |

|  | PAGE     |
|--|----------|
| R. v. North-Eastern Area, Surrey County Assessment Committee, [1933] 1 K. B. 776; 102 L. J. (K. B.) 763; 148 L. T. 428; 97 J. P. 46; 31 L. G. R. 119                             | 243, 248 |
| — v. Northampton County (Inhabitants) (1814), 2 M. & S. 262  | 304      |
| — v. Pearce (1880), 5 Q. B. D. 386; 49 L. J. (M. C.) 81; 28 W. R. 568  | 321      |
| — v. Petrie (1855), 4 E. & B. 737; 24 L. J. (Q. B.) 167; 24 L. T. (o. s.) 271; 19 J. P. 483; 1 Jur. (N. S.) 752; 3 W. R. 243; 6 Cox, C. C. 512; 3 C. L. R. 829                   | 296, 297 |
| — v. Ponsonby (1842), 3 Q. B. 14; 4 State Tr. (N. S.) App. 1369; 1 Gal. & Dav. 713; 11 L. J. (M. C.) 65; 6 J. P. 266; 6 Jur. 642   | 273      |
| — v. Porter and Thomas (1841), 9 C. & P. 778   | 211      |
| — v. Pottage (1922), 17 Cr. App. Rep. 33, C. C. A.   | 123      |
| — v. Price (1884), 12 Q. B. D. 247; 53 L. J. (M. C.) 51; 33 W. R. 45, n.; 15 Cox, C. C. 389  | 68       |
| — v. Reynolds (1910), 74 J. P. Jo. 605; 6 Cr. App. Rep. 28, C. C. A.   | 124      |
| — v. Rigg (1866), 4 F. & F. 1085   | 76       |
| — v. Russell (1905), 93 L. T. 407; 69 J. P. 450; 21 T. L. R. 749; 49 Sol. Jo. 735  | 307      |
| — v. Scott (1842), 2 Q. B. 248, n.   | 83       |
| — v. Sharpe (1857), Dears. & B. 160; 26 L. J. (M. C.) 47; 28 L. T. (o. s.) 295; 21 J. P. 86; 3 Jur. (N. S.) 192; 5 W. R. 318; 7 Cox, C. C. 214                                   | 83       |
| — v. Sheffield Corp. (1871), L. R. 6 Q. B. 652; 40 L. J. (Q. B.) 247; 36 J. P. 37, 229; <i>sub nom.</i> Roberts v. Sheffield Corp., 24 L. T. 659; 19 W. R. 1159                  | 47       |
| — v. Shepherd (1841), 1 Q. B. 170; 4 Per. & Dav. 534; 10 L. J. (M. C.) 44; 5 J. P. 241; 5 Jur. 432   | 273      |
| — v. Smith (1802), 4 Esp. 111  | 304      |
| — v. —— (1857). <i>See</i> Smith v. Birmingham Union.  |          |
| — v. Stewart (1840), 12 Ad. & El. 773; 4 Per. & Dav. 349; 10 L. J. (M. C.) 40; <i>sub nom.</i> R. v. St. George, Hanover Square Overseers, Arn. & H. 83; 4 J. P. 792; 5 Jur. 363 | 83, 85   |
| — v. —— (1857), 8 E. & B. 360; 27 L. J. (M. C.) 81; 30 L. T. (o. s.) 114; 22 J. P. 480; 4 Jur. (N. S.) 187; 6 W. R. 35   | 273      |
| — v. ——, [1896] 1 Q. B. 300; 65 L. J. (M. C.) 83; 74 L. T. 54; 60 J. P. 356; 44 W. R. 368; 40 Sol. Jo. 259; 18 Cox, C. C. 232  | 412      |
| — v. Stratford-upon-Avon Corp. (1811), 14 East, 348  | 263, 264 |
| — v. Studds (1911), 75 J. P. 248   | 119      |
| — v. Sunderland Corp., [1911] 2 K. B. 458; 80 L. J. (K. B.) 1337; 105 L. T. 27; 75 J. P. 365; 27 T. L. R. 385; 9 L. G. R. 928  | 180      |
| — v. Surrey County Assessment Committee, North-Eastern Area, [1933] 1 K. B. 776; 102 L. J. (K. B.) 763; 148 L. T. 428; 97 J. P. 46; 31 L. G. R. 119                              | 243, 248 |
| — v. Thomas (1857), 7 E. & B. 399; 28 L. T. (o. s.) 303; 21 J. P. 661; 3 Jur. (N. S.) 713; 5 W. R. 321   | 302, 303 |
| — v. Tyler and International Commercial Co., Ltd., [1891] 2 Q. B. 588; 61 L. J. (M. C.) 38; 65 L. T. 662; 56 J. P. 118; 7 T. L. R. 720, C. A.                                    | 264      |
| — v. Tyrone County JJ., [1928] N. I. 103   | 287, 289 |
| — v. Vann (1851), 2 Den. 325; T. & M. 632; 21 L. J. (M. C.) 39; 18 L. T. (o. s.) 174; 15 J. P. 802; 15 Jur. 1090; 5 Cox, C. C. 379   | 83, 85   |
| — v. Wallasey Local Board of Health (1869), L. R. 4 Q. B. 351; 10 B. & S. 428; 38 L. J. (Q. B.) 217; 21 L. T. 90; 33 J. P. 677; 17 W. R. 766                                     | 281      |
| — v. Watts (1703), 1 Salk. 357; 2 Ld. Raym. 856  | 286      |
| — v. West (1841), 1 Q. B. 826; 1 Gal. & Dav. 481; 5 Jur. 485   | 68       |
| — v. West Norfolk Assessment Committee, <i>Ex parte</i> Ward (F. B.) (1930), 94 J. P. 201; (1926-31), 1 B. R. A. 418, C. A.  | 244      |
| — v. Williamson (1890), 59 L. J. (Q. B.) 493; 63 L. T. 276; 55 J. P. 101; 38 W. R. 769; 7 T. L. R. 534   | 132      |
| — v. Wood, <i>Ex parte</i> Anderson, [1928] 1 K. B. 302; 97 L. J. (K. B.) 113; 138 L. T. 224; 91 J. P. 185; 44 T. L. R. 23; 25 L. G. R. 501; 28 Cox, C. C. 446                   | 74       |
| — v. ——, <i>Ex parte</i> Atcherley (1908), 73 J. P. 40   | 75       |
| — v. Wright (1832), 3 B. & Ad. 681; 1 L. J. (M. C.) 74   | 296      |
| Ranger v. Great Western Rail. Co. (1854), 5 H. L. Cas. 72; 24 L. T. (o. s.) 22; 18 Jur. 795  | 20       |
| Rayner v. Drewitt (1900), 82 L. T. 718; 64 J. P. 567   | 273      |
| Reeve, <i>Ex parte</i> . <i>See</i> Lowestoft Manor and Great Eastern Rail. Co., <i>Re</i> , <i>Ex parte</i> Reeve.  |          |
| Ricket v. Metropolitan Rail. Co. (Directors, etc.) (1867), L. R. 2 H. L. 175; 36 L. J. (Q. B.) 205; 16 L. T. 542; 31 J. P. 484; 15 W. R. 937                                     | 279      |

TABLE OF CASES

xlix

|  | PAGE      |
|--|-----------|
| Robbins v. Jones (1863), 15 C. B. (N. S.) 221; 3 New Rep. 85; 33 L. J. (C. P.) 1; 9 L. T. 523; 10 Jur. (N. S.) 239; 12 W. R. 248   | 304       |
| Roberts v. Falmouth Sanitary Authority (1888), 52 J. P. 741; 4 T. L. R. 294  | 281       |
| ——— v. Gwyrfai District Council, [1899] 1 Ch. 583; 68 L. J. (Ch.) 233; 80 L. T. 107; 63 J. P. 181; 47 W. R. 376; on appeal, [1899] 2 Ch. 608; 68 L. J. (Ch.) 757; 81 L. T. 465; 64 J. P. 52; 48 W. R. 51; 16 T. L. R. 2; 44 Sol. Jo. 10, C. A. | 114       |
| ——— v. Hunt (1850), 15 Q. B. 17; 4 New Mag. Cas. 87; 15 L. T. (o. s.) 66; 14 J. P. 226   | 297       |
| Robins v. Goddard, [1905] 1 K. B. 294; 74 L. J. (K. B.) 167; 92 L. T. 10; 21 T. L. R. 120, C. A.   | 19        |
| Robson, <i>Ex parte</i> (1887), 18 Q. B. D. 336; 3 T. L. R. 274; <i>sub nom. Re Safron Walden Election</i> , <i>Ex parte Robson</i> , 51 J. P. 199   | 94        |
| Roderick v. Aston Local Board (1877), 5 Ch. D. 328; 46 L. J. (Ch.) 802; 36 L. T. 328; 25 W. R. 403, C. A.  | 282       |
| Rogers v. Price (1829), 3 Y. & J. 28   | 83        |
| Royal Aquarium and Summer and Winter Garden Society v. Parkinson, [1892] 1 Q. B. 431; 61 L. J. (Q. B.) 409; 66 L. T. 513; 56 J. P. 404; 40 W. R. 450; 8 T. L. R. 352, C. A.  | 308       |
| Rugby Charity Trustees v. Merryweather (1790), 11 East, 375, n.  | 298, 299, |
| Rundle v. Hearle, [1898] 2 Q. B. 83; 67 L. J. (Q. B.) 741; 78 L. T. 561; 46 W. R. 619; 14 T. L. R. 440   | 302       |

S.

|   |               |
|---|---------------|
| Sage v. Eicholz, [1919] 2 K. B. 171; 88 L. J. (K. B.) 816; 121 L. T. 151; 83 J. P. 170; 35 T. L. R. 382; 26 Cox, C. C. 432; 17 L. G. R. 354   | 99            |
| St. James and Pall Mall Electric Light Co., Ltd. v. R. (1904), 73 L. J. (K. B.) 518; 90 L. T. 344; 68 J. P. 288   | 280           |
| Sale v. Phillips, [1894] 1 Q. B. 349; 63 L. J. (M. C.) 79; 70 L. T. 559; 58 J. P. 460; 10 T. L. R. 222; 38 Sol. Jo. 237   | 287           |
| Scarborough Corp. v. Cooper, [1910] 1 Ch. 68; 79 L. J. (Ch.) 38; 101 L. T. 552; 74 J. P. 44; 26 T. L. R. 88; 8 L. G. R. 54  | 81            |
| Schiller, The (Cargo Ex) (1877), 2 P. D. 145; 36 L. T. 714; 3 Asp. M. L. C. 439, C. A.  | 322           |
| Scott v. Clifton School Board (1884), 14 Q. B. D. 500; Cab. & El. 435; 52 L. T. 105; 33 W. R. 368; 1 T. L. R. 187   | 22            |
| Sedgwick (Camberwell Revenue Officer) v. Camberwell Assessment Committee and Watney, Combe, Reid & Co., Ltd., [1931] A. C. 447; 100 L. J. (K. B.) 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926-31), 2 B. R. A. 886  | 354, 359      |
| Selby v. Whitbread & Co., [1917] 1 K. B. 736; 86 L. J. (K. B.) 974; 116 L. T. 690; 81 J. P. 165; 33 T. L. R. 214; 15 L. G. R. 279   | 304           |
| Sellors v. Matlock Bath Local Board (1885), 14 Q. B. D. 928; 52 L. T. 762   | 280, 284      |
| Sharp v. Lush (1879), 10 Ch. D. 468; 48 L. J. (Ch.) 231; 27 W. R. 528   | 83            |
| Shaw v. Herefordshire County Council, [1899] 2 Q. B. 282; 68 L. J. (Q. B.) 857; 81 L. T. 208; 63 J. P. 659; 15 T. L. R. 462, C. A.  | 114           |
| Shearburn v. Chertsey R.D.C. (1914), 78 J. P. 289; 12 L. G. R. 622  | 296, 301, 302 |
| Sheringham U.D.C. v. Holsey (1904), 91 L. T. 225; 68 J. P. 395; 20 T. L. R. 402; 48 Sol. Jo. 416; 2 L. G. R. 744  | 303           |
| Sherras v. De Rutzen, [1895] 1 Q. B. 918; 64 L. J. (M. C.) 218; 72 L. T. 839; 59 J. P. 440; 43 W. R. 526; 11 T. L. R. 369; 39 Sol. Jo. 451; 18 Cox, C. C. 157; 15 R. 388  | 263           |
| Simpson v. A.G., [1904] A. C. 476; 74 L. J. (Ch.) 1; 91 L. T. 610; 69 J. P. 85; 20 T. L. R. 761; 3 L. G. R. 190   | 296           |
| ——— v. Wells (1872), L. R. 7 Q. B. 214; 41 L. J. (M. C.) 105; 26 L. T. 163; 36 J. P. 774  | 304           |
| Smart v. West Ham Union Guardians (1855), 10 Exch. 867; 24 L. J. (Ex.) 201; 24 L. T. (o. s.) 277; 19 J. P. 454; 3 W. R. 284; 3 C. L. R. 696; affirmed (1856), 11 Exch. 867; 25 L. J. (Ex.) 210; 26 L. T. (o. s.) 285; 20 J. P. 596; 4 W. R. 301 | 22            |
| Smeed, Dean & Co. v. Port of London Authority, [1913] 1 K. B. 226; 82 L. J. (K. B.) 323; 108 L. T. 171; 29 T. L. R. 122; 12 Asp. M. L. C. 297, C. A.  | 321           |
| Smith v. Birmingham Union (1857), 7 E. & B. 483; 3 Jur. (N. S.) 769; <i>sub nom. R. v. Smith</i> , 26 L. J. (M. C.) 105; 29 L. T. (o. s.) 76; 21 J. P. 694; 5 W. R. 496   | 273           |

|  | PAGE     |
|--|----------|
| Smith v. Northleach R.D.C., [1902] 1 Ch. 197; 71 L.J.(Ch.) 8; 85 L.T. 449; 66 J.P. 88; 50 W.R. 104; 18 T.L.R. 30 . . . . .   | 115      |
| — v. Wilson, [1903] 2 I.R. 45 . . . . .  | 298      |
| Smith's Case (1696), Comb. 386 . . . . .   | 74       |
| Somerset County Council, <i>Ex parte</i> . See Local Government Act, 1888, Re, <i>Ex parte</i> Somerset County Council.  |          |
| Somerville v. Hawkins (1851), 10 C.B. 583; 20 L.J.(C.P.) 131; 16 L.T. (o.s.) 283; 15 Jur. 450 . . . . .  | 308      |
| South Eastern Rail. Co. v. Cooper, [1924] 1 Ch. 211; 93 L.J.(Ch.) 292; 130 L.T. 273; 88 J.P. 37; 22 L.G.R. 109, C.A. . . . .   | 298      |
| South of Ireland Colliery Co. v. Waddle (1868), L.R. 3 C.P. 463; 37 L.J. (C.P.) 211; 18 L.T. 405; 16 W.R. 756; affirmed (1869), L.R. 4 C.P. 617; 38 L.J.(C.P.) 338; 17 W.R. 896 . . . . .  | 15       |
| Southampton Guardians v. Bell and Tayler (1888), 21 Q.B.D. 297; 59 L.T. 181; 52 J.P. 567; 36 W.R. 924 . . . . .  | 117      |
| Spillers, Ltd. v. Cardiff Assessment Committee and Pritchard (Cardiff Revenue Officer), [1931] 2 K.B. 21; 100 L.J.(K.B.) 233; 144 L.T. 503; 95 J.P. 49; 47 T.L.R. 231; 75 Sol.Jo. 173; 29 L.G.R. 411; (1926-31), 2 B.R.A. 818 . . . . .          | 357      |
| Stafford (Marquis) v. Coyney (1827), 7 B.&C. 257; 5 L.J.(o.s.) (K.B.) 285 . . . . .  | 304      |
| Staincross Revenue Officer v. Staincross Assessment Committee and Whitehead (1930), 143 L.T. 525; 94 J.P. 161; 46 T.L.R. 516; 28 L.G.R. 414; (1926-31), 2 B.R.A. 698 . . . . .   | 353      |
| Stanbury v. Exeter Corp., [1905] 2 K.B. 838; 75 L.J.(K.B.) 28; 93 L.T. 795; 70 J.P. 11; 54 W.R. 247; 22 T.L.R. 3; 4 L.G.R. 57 . . . . .  | 207, 398 |
| Stanhope v. Thorsby (1866), L.R. 1 C.P. 423; Har. & Ruth. 459; 35 L.J. (M.C.) 182; 14 L.T. 332; 30 J.P. 342; 12 Jur.(N.S.) 374 . . . . .   | 412      |
| Start v. West Mersea School Board (1899), 63 J.P. 440; 15 T.L.R. 442 . . . . .   | 16, 22   |
| Steevens' Hospital, Dublin v. Dyas (1863), 10 L.T. 882; 15 I.Ch.R. 405; 15 Ir. Jur. 411 . . . . .  | 16       |
| Stephenson v. Higginson (1851), 3 H.L.Cas. 638 . . . . .   | 322      |
| Stepney Borough Council v. Walker (John) & Sons, Ltd., [1934] A.C. 365; 103 L.J.(K.B.) 380; 151 L.T. 42; 98 J.P. 191; 50 T.L.R. 287; 32 L.G.R. 181 . . . . .   | 364      |
| Stepney Corp. v. Gingell, Son and Foskett, Ltd., [1909] A.C. 245; 78 L.J.(K.B.) 673; 100 L.T. 629; 73 J.P. 273; 25 T.L.R. 411; 7 L.G.R. 613; <i>sub nom.</i> Gingell, Son and Foskett, Ltd. v. Stepney Borough Council, 53 Sol.Jo. 356 . . . . . | 304      |
| Stepney Revenue Officer (Barton) v. Twining (R.) & Co., Ltd., [1931] 1 K.B. 385; 100 L.J.(K.B.) 1; 143 L.T. 650; 94 J.P. 177; 46 T.L.R. 601; 74 Sol.Jo. 688; 28 L.G.R. 550; (1926-31), 2 B.R.A. 730, C.A. . . . .                                | 359      |
| Stepney Revenue Officer v. Walker & Sons, Ltd. (1931), English Derating Cases, Vol. II., 274 . . . . .   | 359      |
| Stewart, <i>Re</i> (1889), 41 Ch.D. 494; 60 L.T. 737; 37 W.R. 484; 5 T.L.R. 368 . . . . .  | 117      |
| Stiff v. Eastbourne Local Board (1868), 19 L.T. 408; on appeal (1869), 20 L.T. 339; 17 W.R. 428 . . . . .  | 20       |
| Stone v. Jackson (1855), 16 C.B. 199; 19 J.P. 313 . . . . .  | 302      |
| Stourcliff Estates Co., Ltd. v. Bournemouth Corp., [1910] 2 Ch. 12; 79 L.J.(Ch.) 455; 102 L.T. 629; 74 J.P. 289; 26 T.L.R. 450; 8 L.G.R. 595, C.A. . . . .   | 51       |
| Strickland v. Williams, [1899] 1 Q.B. 382; 68 L.J.(Q.B.) 241; 80 L.T. 4; 15 T.L.R. 131, C.A. . . . .   | 20       |
| Stubbs v. Public Prosecutions Director (1890), 24 Q.B.D. 577; 59 L.J.(Q.B.) 201; 62 L.T. 399; 55 J.P. 69; 38 W.R. 607; 6 T.L.R. 202; 17 Cox, C.C. 1 . . . . .  | 124      |
| Suevic, The, [1908] P. 292; 77 L.J.(P.) 152; 99 L.T. 474; 72 J.P. 407; 24 T.L.R. 699; 11 Asp. M.L.C. 149; 6 L.G.R. 946 . . . . .   | 400      |
| Surrey Revenue Officer v. Clarkson & Sons (1931), English Derating Appeals, Vol. II., 53 . . . . .   | 350      |
| — v. Gridley, Miskin & Co., Ltd. (1931), English Derating Appeals, Vol. II., 236 . . . . .   | 356      |
| Sutton v. Spectacle Makers' Co. (1864), 4 New Rep. 98; 10 L.T. 411; 12 W.R. 742 . . . . .  | 23       |
| Sutton's Hospital Case (1612), 10 Co.Rep. 1a; Jenk. 270 . . . . .  | 263      |
| Swanstion v. Twickenham Local Board (1879), 11 Ch.D. 838; 48 L.J.(Ch.) 623; 40 L.T. 734; 43 J.P. 380; 27 W.R. 924, C.A. . . . .  | 282      |

## T.

|   | PAGE     |
|---|----------|
| Taff Vale Rail. Co. v. Pontypridd U.D.C. (1905), 93 L. T. 126 ; 69 J. P. 351 ; 3 L. G. R. 1339 . . . . .  | 298      |
| Tamplin (F. A.) Steamship Co., Ltd. v. Anglo-Mexican Petroleum Products Co., Ltd., [1916] 2 A. C. 397 ; 85 L. J. (K. B.) 1389 ; 115 L. T. 315 ; 32 T. L. R. 201, 677 ; 13 Asp. M. L. C. 467 ; 21 Com. Cas. 299 . . . . .  | 18       |
| Tepper v. Nichols (1865), 18 C. B. (N. S.) 121 ; Hop. & Ph. 202 ; 34 L. J. (C. P.) 61 ; 11 L. T. 509 ; 11 Jur. (N. S.) 18 ; 13 W. R. 270 . . . . .  | 81       |
| Thomas v. Churton (1862), 2 B. & S. 475 ; 31 L. J. (Q. B.) 139 ; 6 L. T. 320 ; 26 J. P. Jo. 308 ; 8 Jur. (N. S.) 795 . . . . .  | 70       |
| Thorn v. London Corpn. (1876), 1 App. Cas. 120 ; 45 L. J. (Q. B.) 487 ; 34 L. T. 545 ; 40 J. P. 488 ; 24 W. R. 932 . . . . .  | 18       |
| Thornhill v. Weeks (No. 3), [1915] 1 Ch. 106 ; 84 L. J. (Ch.) 282 ; 111 L. T. 1067 ; 78 J. P. 154 ; 12 L. G. R. 597 . . . . .   | 297      |
| Thurrock, Grays and Tilbury Joint Sewerage Board v. Thames Land Co., Ltd. (1925), 90 J. P. 1 ; 23 L. G. R. 648 . . . . .  | 282      |
| Toogood & Sons, Ltd. v. Green, [1932] A. C. 663 ; 101 L. J. (K. B.) 453 ; 147 L. T. 201 ; 96 J. P. 249 ; 48 T. L. R. 463 ; 76 Sol. Jo. 458 ; 30 L. G. R. 301 . . . . .  | 352, 359 |
| Truro Corpn. v. Rowe, [1901] 2 K. B. 870 ; 70 L. J. (K. B.) 1026 ; 85 L. T. 422 ; 65 J. P. 806 ; 50 W. R. 151 ; 17 T. L. R. 773 ; on appeal, [1902] 2 K. B. 709 ; 71 L. J. (K. B.) 974 ; 87 L. T. 386 ; 66 J. P. 821 ; 51 W. R. 68 ; 18 T. L. R. 820, C. A. . . . . | 78       |
| Tunbridge Wells Corpn. v. Baird, [1896] A. C. 434 ; 65 L. J. (Q. B.) 451 ; 74 L. T. 385 ; 60 J. P. 788 ; 12 T. L. R. 372 . . . . .  | 284      |
| Turnbull v. Welland (1871), 24 L. T. 730 ; 36 J. P. 212 . . . . .   | 89       |
| Turner v. Walsh (1881), 6 App. Cas. 636 ; 50 L. J. (P. C.) 55 ; 45 L. T. 50 . . . . .   | 297      |
| Turpin v. Middlesbrough Assessment Committee and Bailey, [1931] A. C. 451 ; 100 L. J. (K. B.) 271 ; 145 L. T. 73 ; 95 J. P. 115 ; 47 T. L. R. 308 ; 29 L. G. R. 279 ; (1926-31), 2 B. R. A. 886 . . . . .   | 352      |
| Twining's Case. See Stepney Revenue Officer (Barton) v. Twining (R.) & Co., Ltd. . . . .  | 298, 303 |

## U.

|   |          |
|---|----------|
| Union Cold Storage Co., Ltd. v. Bancroft (Manchester Revenue Officer), [1931] A. C. 459 ; 100 L. J. (K. B.) 271 ; 145 L. T. 73 ; 95 J. P. 115 ; 47 T. L. R. 308 ; 29 L. G. R. 279 ; (1926-31), 2 B. R. A. 886 . . . . . | 355      |
| — v. Moon, [1932] 2 K. B. 648 ; 101 L. J. (K. B.) 791 ; 147 L. T. 487 ; 96 J. P. 432 ; 30 L. G. R. 433, C. A. . . . .   | 355, 362 |
| Uttley v. Todmorden Local Board of Health (1874), 44 L. J. (C. P.) 19 ; 31 L. T. 445 ; 39 J. P. 56 . . . . .  | 281      |

## V.

|   |          |
|---|----------|
| Vernon v. St. James, Westminster, Vestry (1880), 16 Ch. D. 449 ; 50 L. J. (Ch.) 81 ; 44 L. T. 229 ; 29 W. R. 222, C. A. . . . . | 301, 302 |
| Victoria City Corpn. v. Vancouver Island (Bishop), [1921] 2 A. C. 384 ; 90 L. J. (P. C.) 213 . . . . .                          | 322      |

## W.

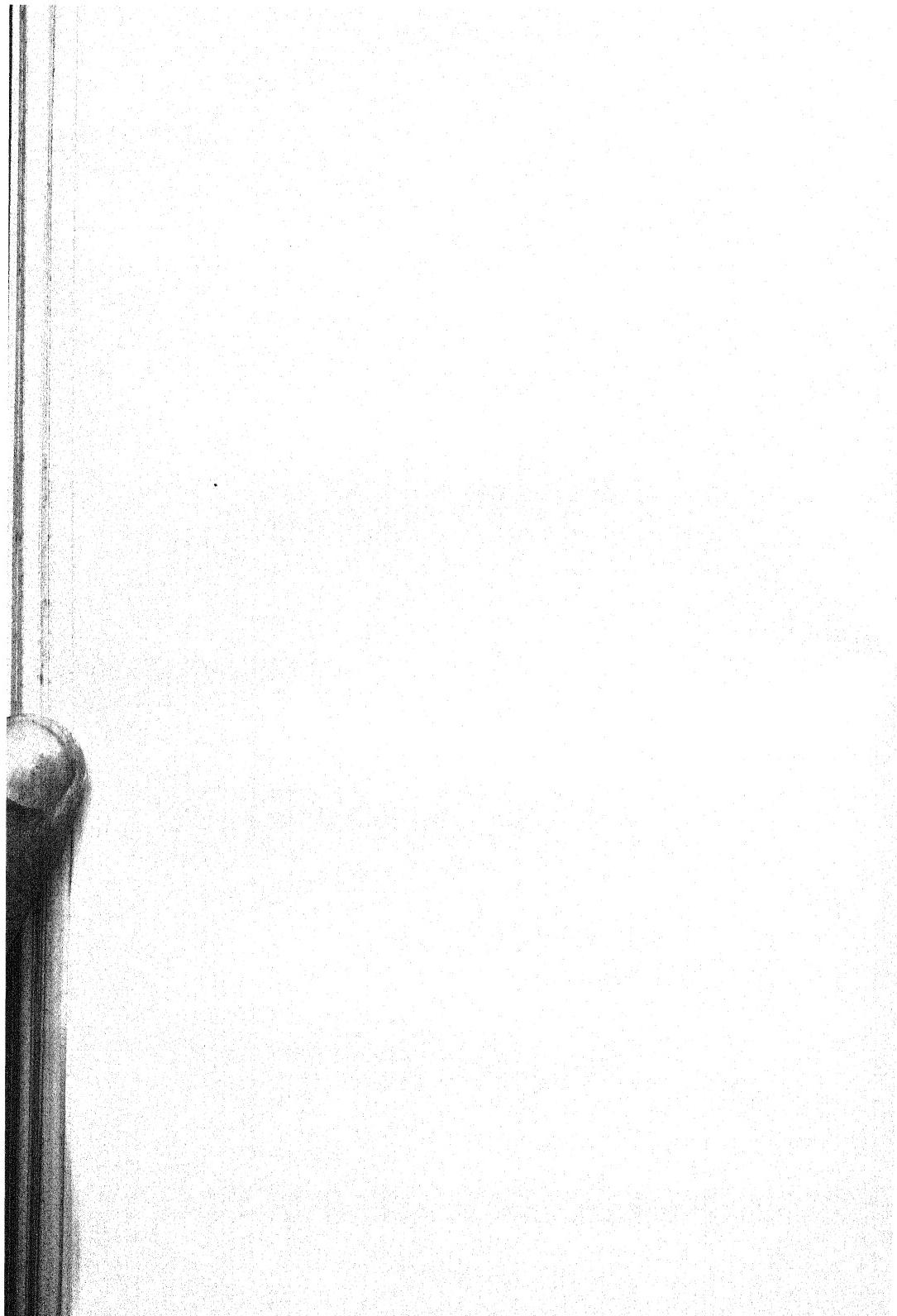
|  |     |
|--|-----|
| Wakley v. Cooke (1849), 4 Exch. 511 ; 19 L. J. (Ex.) 91 ; 14 L. T. (o. s.) 158 ; 13 J. P. 749 . . . . .  | 72  |
| Walker, <i>Ex parte</i> (1889), 22 Q. B. D. 384 ; 53 J. P. 260 ; 37 W. R. 293 ; <i>sub nom.</i> Re Yorkshire County Council, <i>Ex parte</i> Walker, 58 L. J. (Q. B.) 190 ; 60 L. T. 581 ; 5 T. L. R. 217, C. A. . . . . | 94  |
| Walker and Beckenham, Kent Local Board, <i>Re</i> (1884), 50 L. T. 207 ; 48 J. P. 264 . . . . .  | 280 |
| Wallace v. Brandon and Byshottles U.D.C. (1903), 2 Hudson's B.C., 4th ed., 362, C. A. . . . .  | 19  |

|   | PAGE        |
|---|-------------|
| Wallwork <i>v.</i> Fielding, [1922] 2 K. B. 66; 91 L. J. (K. B.) 568; 127 L. T. 131; 86 J. P. 133; 38 T. L. R. 441; 66 Sol. Jo. 366; 20 L. G. R. 618, C. A.   | 203         |
| Walmsley <i>v.</i> Featherstone U.D.C. (1909), 73 J. P. 322; 7 L. G. R. 806   | 302         |
| Walshaw <i>v.</i> Brighouse Corp., [1899] 2 Q. B. 286; 68 L. J. (Q. B.) 828; 81 L. T. 2; 47 W. R. 600; 15 T. L. R. 403; 43 Sol. Jo. 568, C. A.  | 280         |
| Walthamstow U.D.C. <i>v.</i> Henwood, [1897] 1 Ch. 41; 66 L. J. (Ch.) 31; 75 L. T. 375; 61 J. P. 23; 45 W. R. 124; 41 Sol. Jo. 67   | 320         |
| Walton, <i>Ex parte.</i> See R. <i>v.</i> Divine, <i>Ex parte</i> Walton.   |             |
| Ward (F. B.), <i>Ex parte.</i> See R. <i>v.</i> West Norfolk Assessment Committee, <i>Ex parte</i> Ward (F. B.).  |             |
| Watson <i>v.</i> Hythe Borough Council (1906), 70 J. P. 153; 22 T. L. R. 245; 4 L. G. R. 340  | 173         |
| Weatherhead (Bradford Revenue Officer) <i>v.</i> Laycock, Son & Co., Ltd., [1931] 1 K. B. 386; 100 L. J. (K. B.) 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 628; 28 L. G. R. 550; (1926-31), 2 B. R. A. 632, C. A.  | 354,<br>359 |
| Weir <i>v.</i> Fermanagh County Council and Enniskillen Rural District Council, [1913] 2 I. R. 63, 193  | 173         |
| Wells <i>v.</i> Kingston-upon-Hull Corp. (1875), L. R. 10 C. P. 402; 44 L. J. (C. P.) 257; 32 L. T. 615; 23 W. R. 562   | 15, 48      |
| West Derby Revenue Officer (Blunt) <i>v.</i> Tate and Lyle, Ltd., [1931] 2 K. B. 21; 100 L. J. (K. B.) 233; 144 L. T. 503; 95 J. P. 49; 47 T. L. R. 231; 75 Sol. Jo. 173; 29 L. G. R. 411; (1926-31), 2 B. R. A. 818  | 357         |
| Westminster Vestry <i>v.</i> Hoskins, [1899] 2 Q. B. 474; <i>sub nom.</i> St. Margaret's and St. John's Vestry <i>v.</i> Hoskins, 68 L. J. (Q. B.) 840; 81 L. T. 390; 63 J. P. 725; 47 W. R. 649; 15 T. L. R. 414; 43 Sol. Jo. 571  | 272         |
| Weymouth and Channel Islands Steam Packet Co., <i>Re</i> , [1891] 1 Ch. 66; 60 L. J. (Ch.) 93; 63 L. T. 686; 39 W. R. 49; 7 T. L. R. 67; 2 Meg. 366, C. A.  | 28          |
| Wilkinson (Taunton Revenue Officer) <i>v.</i> Sibley and Donovan, [1932] 1 K. B. 194; 101 L. J. (K. B.) 26; 146 L. T. 1; 95 J. P. 208; 29 L. G. R. 633; (1926-31), 2 B. R. A. 926, C. A.  | 353         |
| Willesden Local Board and Wright, <i>Re</i> , [1896] 2 Q. B. 412; 65 L. J. (Q. B.) 567; 75 L. T. 13; 60 J. P. 708; 44 W. R. 676; 12 T. L. R. 539, C. A.   | 280         |
| William Bean & Sons, Ltd. <i>v.</i> Flaxton R.D.C. See Bean (William) & Sons, Ltd. <i>v.</i> Flaxton R.D.C.   |             |
| Williams <i>v.</i> Barmouth U.D.C. (1897), 77 L. T. 383, C. A.  | 16, 18      |
| _____ <i>v.</i> Manchester Corp. (1897), 45 W. R. 412; 13 T. L. R. 299; 41 Sol. Jo. 388   | 184         |
| _____ <i>v.</i> Morgan (1921), 125 L. T. 543; 85 J. P. 191; 19 L. G. R. 409; 27 Cox, C. C. 37   | 321         |
| _____ <i>v.</i> Williams (1882), 20 Ch. D. 659; 51 L. J. (Ch.) 385; 46 L. T. 275; 46 J. P. 726; 30 W. R. 438; 15 Cox, C. C. 39  | 83, 256     |
| Willion <i>v.</i> Berkley (1561), 1 Plowd. 223  | 269         |
| Wilson <i>v.</i> Yates (1927), 91 J. P. 188; 44 T. L. R. 25; 25 L. G. R. 514  | 412         |
| Wimbledon and Putney Common Conservators <i>v.</i> Dixon (1875), 1 Ch. D. 362; 45 L. J. (Ch.) 353; 33 L. T. 679; 40 J. P. 102; 24 W. R. 466, C. A.  | 300         |
| Winterbottom <i>v.</i> Derby (Lord) (1867), L. R. 2 Exch. 316; 36 L. J. (Ex.) 194; 16 L. T. 771; 31 J. P. 566; 16 W. R. 15  | 298         |
| Withington Local Board of Health <i>v.</i> Manchester Corp., [1893] 2 Ch. 19; 62 L. J. (Ch.) 393; 68 L. T. 330; 41 W. R. 306; 9 T. L. R. 257; 37 Sol. Jo. 249; 2 R. 367; <i>sub nom.</i> Crofton <i>v.</i> Manchester Corp., Withington Local Board <i>v.</i> Same, A.-G. <i>v.</i> Same, 57 J. P. 340, C. A. | 390         |
| Wixon <i>v.</i> Thomas (No. 2), [1912] 1 K. B. 690; 81 L. J. (K. B.) 686; 106 L. T. 312; 76 J. P. 153; 28 T. L. R. 232; 10 L. G. R. 267; Konst. & W. Rat. App. 244, C. A.   | 273         |
| Wood <i>v.</i> Veal (1822), 5 B. & Ald. 454; 1 Dow. & Ry. (M. C.) 11; 1 Dow. & Ry. (K. B.) 20   | 297, 298    |
| Woodyer <i>v.</i> Hadden (1813), 5 Taunt. 125   | 300         |
| Woolwich Overseers <i>v.</i> Robertson (1881), 6 Q. B. D. 654; 50 L. J. (M. C.) 87; 44 L. T. 747; 45 J. P. 766; 29 W. R. 892  | 84          |
| Worcester (Borough) Case (1892), 4 O'M. & H. 153; Day, 85   | 92          |
| Worcestershire County Council <i>v.</i> Worcester Union, [1897] 1 Q. B. 480; 66 L. J. (Q. B.) 323; 76 L. T. 138; 61 J. P. 244; 45 W. R. 309; 13 T. L. R. 210; 41 Sol. Jo. 293, C. A.  | 273         |
| Worthington <i>v.</i> Sudlow (1862), 2 B. & S. 508; 31 L. J. (Q. B.) 131; 6 L. T. 283; 26 J. P. 453; 8 Jur. (N. S.) 668; 10 W. R. 621   | 18          |

|   | PAGE |
|---|------|
| Wright <i>v.</i> Wallasey Local Board (1887), 18 Q. B. D. 783 ; 56 L. J. (Q. B.) 259 ;<br>52 J. P. 4 ; 3 T. L. R. 525 . . . . .   | 255  |
| Wych <i>v.</i> Meal (1734), 3 P. Wms. 310 . . . . .   | 265  |
| Wynn <i>v.</i> Conway Corpn., [1914] 2 Ch. 705 ; 84 L. J. (Ch.) 203 ; 111 L. T.<br>1016 ; 78 J. P. 380 ; 30 T. L. R. 666 ; 59 Sol. Jo. 43 ; 13 L. G. R. 137, C.A. . . . . | 80   |

## Y.

|  |     |
|--|-----|
| Yates (Burnley Assessment Area Revenue Officer) <i>v.</i> Burnley Rating Authority<br>(1933), 97 J. P. 226 ; 31 L. G. R. 322 . . . . . | 349 |
|--|-----|



# CONSTITUTIONAL LAW AND LOCAL GOVERNMENT

| PAGE  | PAGE  |
|---|---|
| INTRODUCTION - - - - - 1  | LOCAL AUTHORITIES AND CENTRAL<br>DEPARTMENTS - - - - - 4                            |
| DEFINITION - - - - - 1  | DELEGATION OF POWERS - - - - - 6  |
| THE PLACE OF LOCAL GOVERN-<br>MENT LAW IN THE ENGLISH<br>LEGAL SYSTEM - - - - - 2 | Legislative Powers - - - - - 6<br>Judicial and Quasi-Judicial<br>Powers - - - - - 7 |

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*See also titles :*

AREAS OF LOCAL GOVERNMENT ;  
GOVERNMENT CONTROL ;  
LOCAL GOVERNMENT ;

POWERS OF MINISTERS ;  
SECRETARY OF STATE ;  
ULTRA VIRES.

FOR CONSTITUTIONAL LAW IN GENERAL, See HALSBURY'S LAWS OF ENGLAND  
(2ND ED.), VOL. 6, TITLE "CONSTITUTIONAL LAW."

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**Introduction.**—It is obviously impossible in the space of a few pages to deal exhaustively with the subject of Constitutional Law as affecting Local Government. An attempt will be made, therefore, to outline the principal ways in which Constitutional Law impinges on Local Government Law and to correlate the two. [1]

**Definition.**—Constitutional Law is that part of English law which relates to government. It is difficult to define its exact scope with any degree of precision, owing to the impossibility in this country of discovering a fundamental difference between public law and private law or of assigning exclusive provinces to either of them. There is, in England, no particular written document which contains the constitution, as is the case in most foreign countries, and we are, therefore, confronted by the difficulty which forced from De Tocqueville, in a moment of irritation, the impatient aphorism : "There is no constitution in England." A more just estimate of the position is that the English constitution is unfixed and flexible, whereas the constitutions of other countries are rigid. It is not so much that our constitution is unwritten, for much the largest part of it is written and printed. [2]

In the section on Constitutional Law in Halsbury's Laws of England it is stated : "From the legal point of view, government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations which exercise public functions. The structure of the machinery of government, and the regulation of the powers and duties which belong to the different parts of this structure, are defined by the law, which also prescribes, to some extent, the mode in which these powers are to be exercised or these duties performed" (a). [3]

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(a) Vol. 6, p. 379, para. 424.

The British constitution has grown up gradually out of judicial decisions, occasional statutes such as the Bill of Rights, 1688 (*b*), and the Act of Settlement, 1700 (*c*), and from practical courses of convenience which have in time grown into fixed conventions. The latter source, however, with the interesting exception of the status of boroughs as common law corporations (see title COMMON LAW CORPORATIONS), has no place in the law of local government, which is derived from statutes, judicial decisions and subordinate legislation drawn up by Government departments or local authorities and embodied in Orders in Council, rules, regulations or bye-laws. [4]

Among the persons or bodies on whom powers are conferred and duties imposed are the Ministers of the Crown, such as a Secretary of State or the Ministers of Health or Transport, central authorities performing one group of related functions such as the Central Electricity Board and local authorities and their officers. Local authorities may be divided into those authorities who perform one group of related functions such as catchment boards or the London Passenger Transport Board and those authorities on whom a more various jurisdiction is conferred. The latter class consists of county councils, county borough councils, borough councils, urban and rural district councils and parish councils. Central and local authorities performing one group of related functions naturally vary as widely in their constitution as in their purposes. Central authorities of this type differ from Ministers of the Crown in that they are seldom appointed by the King, and local authorities of this type differ from those listed above in that they are seldom elected directly by the persons most nearly affected by their actions (*d*). Owing to this variety of constitution and function it is impossible to deal with them generally and reference should be made to the titles dealing with the specific bodies (e.g. for central authorities : CENTRAL ELECTRICITY BOARD, ELECTRICITY COMMISSIONERS, FORESTRY; for local authorities : CATCHMENT BOARDS, CONSERVANCY AUTHORITIES, DRAINAGE BOARDS, STANDING JOINT COMMITTEES; and for particular local authorities : LONDON ROADS AND TRAFFIC (for the London Passenger Transport Board) and THAMES CONSERVATORS). [5]

**The Place of Local Government Law in the English Legal System.—**A local government authority is, generally speaking, a body corporate constituted by Act of Parliament and endowed with statutory powers. Municipal corps. form an exception in that they are created by Royal Charter, and the body corporate consists of the mayor, aldermen and burgesses of the borough, while all the functions of the municipal corp. are exercised by the council of the borough (*e*). But the exercise by the Crown of the power of granting a charter of incorporation and thereby creating a new borough is regulated by statute, as is also the power of granting an amending charter (*f*). [6]

(*b*) 3 Statutes 149.

(*c*) *Ibid.*, 156.

(*d*) These differences are not universally true, since the members of drainage boards are elected by owners and occupiers of land on which a drainage rate has been levied in the year immediately preceding (Land Drainage Act, 1930, s. 33 (1) and Third Schedule, Part I.; 23 Statutes 553, 588); and the members of the Forestry Commission are appointed by His Majesty by warrant under the sign manual (Forestry Act, 1919, s. 1; 3 Statutes 443).

(*e*) See s. 17 of the L.G.A., 1933; 26 Statutes 313.

(*f*) L.G.A., 1933, ss. 129, 130; 26 Statutes 374, 375.

The fact that, with the exception mentioned above, all local authorities derive their existence and functions from Acts of the Legislature gives an erroneous impression that the English system of local government is not a natural growth but is devised and imposed from above as many continental systems are. In the eighteenth century the county magistrates evolved for themselves an elaborate system of local administration much of which was without a legislative basis. This process was checked in the first half of the nineteenth century. The development of the *ultra vires* doctrine (see title ULTRA VIRES) by the courts and the improved technique of control of the central departments of government have prevented its recurrence. Attempts have been made from time to time to continue the process of evolution without legislative sanction, but it is believed invariably without success (g). Local initiative, however, had made use of another process in its attempts to improve local administration, namely, that of obtaining local Acts of Parliament. This process has been greatly developed and has had an effect on the general law, in that powers obtained by individual authorities and found to be valuable have been incorporated in Acts of general application and left to be applied in the future to particular authorities either by adoption by the authorities themselves or by ministerial order (see title ADOPTIVE ACTS, Vol. I., p. 102). Some of the larger local authorities have accumulated powers by this means to an extent which differentiates their position considerably from that of other authorities nominally of the same type. Therefore, though it is true to say that local authorities (with the exception mentioned above) are the creatures of statute, yet the constituting and enabling statutes are themselves largely the product of the administrative doctrines and technique devised in the eighteenth century by the county magistrates and since by enlightened inhabitants or local authorities (h). [7]

County councils, borough councils, district councils and parish councils (to which authorities alone the term local authorities is applied in the rest of this article) are, at the present day, all created under powers conferred by statute. The Acts which constitute these bodies also define their functions and confer powers on them either—

- (a) by transferring to them the powers of existing bodies (e.g. the transfer to the newly constituted county councils of certain powers of the justices in quarter sessions made by sect. 3 of the L.G.A., 1888 (i)); or
- (b) by endowing them with new powers (e.g. the powers as to bridges conferred on county councils by sect. 6 of the same Act). [8]

The powers and duties of local authorities are derived from public general Acts, local Acts, provisional orders and departmental orders. Both classes of Acts must be passed by Parliament and receive the assent of the Crown. A provisional order is a departmental order which must be confirmed by a Bill introduced into Parliament, and this

(g) For example, the Manchester Corpn. attempted to establish a parcels delivery business, without legislative sanction, which was checked by the courts, see *A.-G. v. Manchester Corpn.*, [1906] 1 Ch. 643; 13 Digest 362, 972.

(h) For the development of local administration by county magistrates, see Sidney and Beatrice Webb, "English Local Government. The Parish and the County," Book II., c. 5.

(i) 10 Statutes 688.

must pass through the stages appropriate to a Bill for a local Act (*k*). Departmental orders are of various kinds. In some instances, as in the case of special orders conferring powers on electricity or gas undertakers, they must be approved, with or without modification, by a resolution of each House of Parliament, while not being subject to the procedure necessary for the passage of a Bill (*l*). Other kinds of orders must be laid before Parliament for a specified number of days, and if during that period an adverse resolution is passed by either House, the order does not come into operation (*m*). In many instances, especially where the order is of an administrative rather than a legislative character, no provision for Parliamentary control is made by the enabling statute, although even here the action of the Government department in making the order may be so criticised on the vote for the Minister's salary or on a motion for the adjournment of the Commons that the amendment or withdrawal of the order is agreed to by the Government.

A provision in a modern Act authorising rules or regulations for a given purpose to be made by a Government department usually requires that they shall be submitted to Parliament and in some instances in draft (*n*). But here again there is much diversity in the procedure to be followed for challenging them in Parliament (*o*). [9]

Another important means of supplementing the general law possessed by local authorities is the power to make bye-laws. These normally require the confirmation of the Minister of Health or of the Home Secretary. The court may declare a bye-law invalid as being either *ultra vires* or an unreasonable exercise of power (*p*). [10]

An illuminating comment on the modern trend of government is made in the Report of the Committee on Finance and Industry (*q*) :

"The most distinctive indication of the change of outlook of the government of this country in recent years has been its growing pre-occupation, irrespective of party, with the management of the life of the people. A study of the Statute Book will show how profoundly the conception of the function of government has altered. Parliament finds itself increasingly engaged in legislation which has for its conscious aim the regulation of the day-to-day affairs of the community, and now intervenes in matters formerly thought to be entirely outside its scope. This new orientation has its dangers as well as its merits. Between liberty and government there is an agelong conflict. It is of vital importance that the new policy, while truly promoting liberty by securing better conditions of life for the people of this country, should not in its zeal for interference deprive them of their initiative and independence which are the nation's most valuable assets." [11]

**Local Authorities and Central Departments.**—The improvement of the technique of control by central departments of government has already been mentioned. The control now exercised is close and

(*k*) See e.g. s. 285 of the L.G.A., 1933; 26 Statutes 456.

(*l*) See e.g. the titles ELECTRICITY SUPPLY and GAS.

(*m*) See e.g. s. 299 of the L.G.A., 1933; 26 Statutes 464.

(*n*) See e.g., *ibid.*, s. 204; *ibid.*, 416, as to the creation and issue of stock.

(*o*) Government Departments are directed to send to the King's Printer for publication every exercise of a statutory power which is "of a legislative and not of an executive character." The Editor of "Statutory Rules and Orders" stated in his evidence before the Committee on Ministers' Powers (Cmd. 4060/1932, at p. 207), that some of the documents sent to the King's Printer are rejected as executive, and that there is occasionally doubt on this point.

(*p*) *Kruse v. Johnson*, [1898] 2 Q. B. 91; 13 Digest 326, 631.

(*q*) Cmd. 3897, Part VIII., pp. 4, 5.

constant both by positive restraint or stimulation and by advice and suggestion. Local authorities still possess and exercise considerable freedom of choice as to policy, and as to the initiation of new policy, by the promotion of local Bills. It must also be remembered that local authorities are not the servants of the central government. They are, within the terms of their enabling statutes, independent powers and may and in many cases indeed must act on their own initiative and judgment. The powers of control and stimulation possessed by the central government are occasionally limited by the enabling statutes as well as the powers of action of the local authorities themselves. [12]

Nevertheless, it is incontrovertible, that principally through the medium of financial control, both in respect of loan sanctions and of grants to local authorities, and also through the audit of accounts by the district auditor, the central departments are to-day exercising a closer supervision and control over local authorities than in the past. Cases have even occurred in which a Government department has brought to bear pressure on local authorities in advance of legislation, e.g. by requiring the enlargement of schools and the training of teachers before the passage of a Bill raising the school leaving age. [13]

There is one important difference between local government law and constitutional law as related to the central government. In local government law, the doctrine of the prerogative plays no part. The powers are strictly legal. They are derived from statutes and are exercised by statutory bodies subject to the *ultra vires* rule, though various boroughs have attempted to avoid the restrictions of this rule by relying on their status as common law corps. (for which see that title). [14]

Within its legal limits, each local authority may act as it pleases, subject, as we have seen, to the pressure which the central government can bring to bear through (1) supervision and inspection by central officials, (2) financial control, and (3) the exercise under statute of "powers of default," under which, in the last resort, powers may be taken from one local authority and transferred to another. [15]

The paradox of government, it has been said, is that, as the good of the community involves a maximum of individual liberty for all its members, the rulers have at the same time to enslave every one ruthlessly and to secure for every one the utmost possible freedom. Central and local authorities of all kinds are becoming more and more part of our governmental system despite the large differences in their historical origin and legal status, and their relationship should be regarded as one of partnership and collaboration.

Owing to the growing complexity of modern civilisation it is becoming increasingly difficult to fix a precise line of demarcation between the functions of local authorities of all types and central government. (For an examination of this position, see the title LOCAL GOVERNMENT). [16]

The Minister of Health is the Minister chiefly concerned in supervising the local government services. In the matter of housing, the Minister exercises the closest supervision; through his officials he not only decides to what extent local effort should be subsidised, but he also decides what schemes should be set on foot, though, as has been said, the initiative in this, as in most other matters, lies with the local authority. The Minister has cognisance of a great number of other services, such as public health (which in itself covers a vast number of matters), town planning, public assistance, etc.

The Board of Education administers in conjunction with local authorities the system of education, which is one of the national services which are locally administered.

The Minister of Transport, through the Roads Department, controls the local highway authorities, largely through the grants made towards the construction and upkeep of roads.

There are, in fact, very few matters which a local authority deals with without the controlling influence of a central department being felt in some way or another, and the present tendency, unlike that obtaining at the beginning of the century, is for Parliament, in conferring powers and duties on local authorities, to prescribe those duties in outline and to allow a Government department to exercise extensive supervisory powers and to fill in the details of the sketch with rules and regulations.

The check which local government brought to bear on the central government was a leading feature of constitutional development in the last century. Of recent years, the Central departments of Governments have endeavoured to counteract this tendency. [17]

**Delegation of Powers.**—Two important questions may be adumbrated. Both of them are fully dealt with in the Report of the Committee on Ministers' Powers (r). They are, in brief :

"What are the constitutional consequences of delegating (1) legislative, and (2) judicial powers to Government departments, and what are the proper safeguards which should be applied to such delegation."

**Legislative Powers.**—The Committee on Ministers' Powers was set up by the Lord Chancellor in October, 1929, largely as a result of the criticisms on modern constitutional tendencies. The gravamen of such criticisms were that a large and increasing amount of departmental activity was being placed beyond the reach of ordinary law; Parliament was being out-maneuvred and the courts defied, through permanent officials getting legislation passed in skeleton form and filling up the gaps with their own rules, orders and regulations, making it difficult or impossible for Parliament to control them and preventing any sort of appeal to a court of law. Lord Donoughmore's Committee, however, took a less gloomy view than Lord Hewart. In dealing with the practical reasons for delegation, the committee point out that before the middle of the nineteenth century the main functions of government in England were those of defence and police. The State departments were few in number and the management of the life of the people was not regarded as a function of the Government. Parliament were thus well able to pass all the necessary legislation, and there was no need to resort to any excessive delegation of legislative power. Nowadays, however, Parliament passes so many laws every year that it lacks the time to shape all the legislative details. Much of the detail is so technical as to be unsuitable for Parliamentary discussion—for example, "patents, copyright, trade-marks, designs, diseases, poisons, the pattern of miners' safety lamps, wireless telegraphy, the heating and lighting values of gas, legal procedure, or the intricacies of finance." Many of the laws affect the lives of the people so closely that elasticity is essential. It is impossible to pass an Act of Parliament to control an epidemic of measles or an outbreak of

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(r) Cmd. 4060/1932. This Committee is usually called the [Donoughmore Committee.

foot-and-mouth disease as and when it occurs, and such measures as the Public Health Acts must be differently applied in different parts of the country. [18]

The two main problems to be faced in connection with delegated legislation may be summarised as follows :

1. The need for keeping Parliament and the public fully informed with regard to the exercise of that part of the administrative functions of the departments which is comprised in the phrase "delegated legislation."
2. The need of securing some means whereby the public is protected against the undue exercise of departmental powers.

Orders, rules and regulations affecting classes of people strongly organised can be made by the enacting Minister after consultation with an informed public opinion, but regulations have, of course, sometimes to be made which affect large numbers of people who have no organisation which can be consulted ; e.g. in making regulations for the prevention of danger to health arising from bad or impure food, the Minister of Health can consult trade interests, but cannot consult the consumers as a whole. The protection of consumers must necessarily be in the hands of their Parliamentary representatives who can at a later date criticise the action of the Minister in Parliament.

No system of protection of unorganised consumers or any other unorganised section of the public has yet been worked out, and consequently for the present their protection has to be entrusted to the action of Parliament and in some respects of the courts. Both these forms of supervision of delegated legislative powers are inappropriate. The very reasons which make it desirable for Parliament to delegate legislative powers, namely, lack of time, the necessity for elasticity and the technicality of the subject make it difficult for Parliament to supervise the exercise of the delegated powers.

The Government have not yet introduced general legislation in consequence of the Report of the Donoughmore Committee. [19]

*Judicial and Quasi-Judicial Powers.*—Judicial powers have been conferred by Parliament on Ministers of State with increasing frequency during the last fifty years. Public enactments relating to local government, public health, education and health and unemployment insurance, abound with provisions in which disputes between administrative authorities, householders, parents, employers, insured persons, doctors and other sections of the community are determined not by the courts of law but by Departments of State or administrative tribunals appointed by Ministers.

Lord Sankey has well written :

"As civilisation advances and society becomes more complex, the State begins to control the lives and destinies of its members. Disputes between individuals no longer concern only the individuals themselves. The relationship between them may affect the health and even the liberty of others of their fellow countrymen. New situations are created and a new class of case arises where the State itself becomes, as it were, a party to the action. Instances occur in such matters as conditions of employment regulated by the Factory, Trade Boards and Local Government Acts, or again, in the Public Health, Town Planning and Small Holdings Acts."

After making a detailed survey of existing specialised courts (e.g. the Railway Rates Tribunal) and Ministerial Tribunals such as the Court of

Referees under the Unemployment Insurance Acts, the Donoughmore Committee attempt to reach some principle on the subject of the delegation of judicial and semi-judicial powers.

"It is obvious," they say, "that the separation of powers is *prima facie* the guiding principle by which Parliament when legislating should allocate the executive and judicial tasks involved in its legislative plan."

If the statute is in general concerned with administration, an executive department should be entrusted with its execution; but if the measure is one in which justiciable issues will be raised in the course of carrying the Act into effect, and truly judicial determination will be needed, in order to reach decisions, then *prima facie* that part of the task should be separated from the rest and reserved for decision by a court of law. [20]

On the other hand, *quasi-judicial* decisions, which ultimately turn on administrative policy, should normally be taken by the executive Minister. The public inquiries held, e.g. by inspectors of the M. of H. under the Housing Acts, are, it is true, to some extent judicial. But the rights of the parties affected are not finally determined at the inquiry, but by the exercise of the Minister's discretion after he has considered the inspector's report. [21]

The Donoughmore Committee recommended in this connection that "in any case in which a statutory public inquiry is held in connection with the exercise of judicial or *quasi-judicial* functions by Ministers, the report made by the person holding the inquiry should be published; and only the most exceptional circumstances and the strongest reasons of public policy should be held to justify a departure from this rule." [22]

The notion which lies at the bottom of the "administrative law" known to certain foreign countries is that affairs or disputes in which the government or its servants are concerned are beyond the sphere of the civil courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, where no distinction is made between a case involving questions as to the powers and liabilities of a local authority, and one to decide a dispute between two private persons. All questions which come before a court are decided by the usual judges. This does not mean that local government law cannot be distinguished from private law, but in its administration there is no distinction. [23]

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## CONSUMPTIVES

*See TUBERCULOSIS.*

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## CONTINUATION SCHOOLS

| PAGE  | PAGE |                                     |    |
|---|------|-------------------------------------|----|
| ESTABLISHMENT OF CONTINUATION SCHOOLS - - - - - | 9    | EXEMPTION FROM ATTENDANCE - - - - - | 10 |
| THE AIM OF CONTINUATION SCHOOLS - - - - -       | 9    | ENFORCEMENT OF ATTENDANCE - - - - - | 10 |
| COMPULSORY ATTENDANCE - - - - -                 | 10   | REGULATIONS - - - - -               | 11 |
|   |      | HOW FAR ESTABLISHED - - - - -       | 11 |
|   |      | LONDON - - - - -                    | 11 |

*See also titles :*

BOARD OF EDUCATION ;  
 CENTRAL AND SENIOR SCHOOLS ;  
 DIRECTOR OF EDUCATION ;  
 EDUCATION ;  
 EDUCATION SPECIAL SERVICES ;

ELEMENTARY EDUCATION ;  
 HIGHER EDUCATION ;  
 SECONDARY EDUCATION ;  
 TECHNICAL AND COMMERCIAL EDUCATION.

**Establishment of Continuation Schools.**—For some years prior to the passing of the Education Act, 1918 (*a*), educationists had recognised the desirability of bridging the gap that existed between the school and the workshop. It was also recognised that there was little incentive for pupils terminating their whole-time education at fourteen to pursue a part-time course of instruction after the ordinary working hours. The matter was, however, brought particularly into prominence towards the end of the Great War, and as a result of the report issued by the departmental committee on " Juvenile Education in Relation to Education after the War," the Education Act, 1918, made provision for the establishment of continuation schools (*b*). These provisions were re-enacted in the Education Act, 1921. By sect. 75 (*c*) a duty was placed on every local education authority for higher education, either separately or in co-operation with other local education authorities, to establish and maintain under their control and direction a sufficient supply of continuation schools. Suitable courses of study, instruction and physical training were to be provided for young persons (*i.e.* persons between the ages of fourteen and eighteen (*d*)) without payment of fees (*e*). [24]

**The Aim of Continuation Schools.**—The immediate aim of the day continuation school was to take the practical life of boys and girls in the workshop, office and the farm, and endeavour to give it a new social value. The course of education was intended to enlarge the interests of these young people, widen their outlook and enrich their understanding of life.

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(*a*) For the most part repealed by the Education Act, 1921.

(*b*) S. 3.

(*c*) 7 Statutes 170.

(*d*) Education Act, 1921, s. 170 (13), (14) ; 7 Statutes 213, 214.

(*e*) *Ibid.*, s. 75.

The teaching was to be essentially practical in character, thus embracing a variety of interesting handicrafts, and physical education—including organised games. Class libraries, workshops for handicrafts and practical science, and, in the case of girls, domestic rooms, were to be features of every school.

The school was to be a community, a corporate entity developing a strong recreative and social side, with clubs and societies under the control of the pupils themselves. [25]

**Compulsory Attendance.**—Young persons, with certain exceptions (see *infra*), were required by sect. 76 of the Education Act, 1921, to attend at continuation schools for 320 hours each year, but these hours might be distributed as regards times and seasons to suit the circumstances of each locality. But for the first seven years after sect. 76 was brought into operation in an area by the Board of Education (f) the obligation to attend school would not apply to young persons between the ages of sixteen and eighteen. Local education authorities were also given power to reduce the requisite number of hours from 320 to 280 during the same period (g).

A local education authority were not to require young persons to attend continuation schools on Sundays or other specified holidays (h), nor were they to require them to attend schools held at or in connection with their places of employment (*i.e.* "works" schools) without the consent of the young persons (i).

As far as possible the wishes of a young person or his parent as to the continuation school he should attend were to be met by the local education authority (k). [26]

**Exemption from Attendance.**—The Act specified certain persons who were exempt from attendance at a continuation school. These exempted persons were those who were over fourteen years of age on sect. 76 being brought into operation, or who were in sea service after having completed a satisfactory course of training, or who were over sixteen years and had either passed a matriculation examination or its equivalent, or who had been in satisfactory full-time instruction in a school recognised by the Board of Education, up to the age of sixteen years (l).

Neither did compulsory attendance apply to those who were attending full-time instruction in a school recognised by the Board of Education, or who were under some satisfactory part-time instruction for the number of hours for which attendance at a continuation school was compulsory (m).

In cases where the local education authority had refused to accept as satisfactory, instruction given at an educational institution, a young person or his parent might make representations to the Board of Education (n). [27]

**Enforcement of Attendance.**—If a young person failed to attend a continuation school as required, except by reason of sickness or other unavoidable cause, he was liable to a fine not exceeding five shillings for the first, and one pound for a second or subsequent offence (o). Parents

(f) Different days might be appointed by the Board for different areas (s. 173 (3)).

(g) S. 76 (1); 7 Statutes 170.

(h) S. 76 (2).

(i) S. 76 (3).

(k) S. 76 (4).

(l) S. 77 (1).

(m) S. 77 (2).

(n) S. 77 (4).

(o) S. 78 (1).

who conduced to, or connived at, the failure of their young persons to comply with the requirements to attend continuation schools were liable to a fine not exceeding two pounds for a first, and five pounds for a second or subsequent offence (*p*). [28]

**Regulations.**—The Board of Education are empowered to make regulations dealing with the necessary details in order to give effect to the requirements of the Education Act, 1921, as far as continuation schools are concerned (*q*), but no such regulations have been made. [29]

**How far Established.**—For various reasons, including opposition on the part of young persons seeking employment, and national calls for economy in educational administration, continuation schools have not become the feature in educational development that they were intended to be when the Education Act, 1918, was passed. Sect. 10 of that Act, relating to continuation schools, was brought into operation by the Board of Education in less than a dozen areas only, and when the Education Act, 1921, was brought into operation, the order provided that sects. 76, 77 and 93 of that Act should come into force in those areas only in which sect. 10 of the Education Act, 1918, was in force. It follows that a very small number of areas have established statutory day continuation schools. At the present time it is believed that only one statutory day continuation school is being conducted. [30]

**London.**—The L.C.C., as local education authority, established compulsory day continuation schools under the Education Act, 1918, but owing to public opposition and the calls for economy the schools were discontinued. At present the Council has organised voluntary day continuation schools at eleven centres. At five of the centres classes are organised at the request of the Ministry of Labour for unemployed juveniles, who are required to attend the classes as one of the conditions for qualifying for unemployment benefit. [31]

(*p*) S. 78 (2); 7 Statutes.

(*q*) S. 79 (1); 7 Statutes 173.

## CONTRACTORS' PRINCIPLE

*See VALUATIONS FOR RATING.*

# CONTRACTS

| PAGE   | PAGE  |
|--|---|
| INTRODUCTION - - - - - 12                                  | RATIFICATION UNDER SEAL - - - 21                            |
| NECESSITY FOR SEAL - - - - - 13                            | CONTRACTS WITH AGENTS AND<br>SERVANTS - - - - - 22          |
| PRESUMPTION OF DUE EXECUTION 13                            | MEMBER'S INTEREST IN CONTRACTS 23                           |
| EXCEPTIONS TO NECESSITY OF SEAL 14                         | OFFICER'S INTEREST IN CONTRACTS 25                          |
| COPROMISES - - - - - 16                                    | CONTRACTS OF COMMITTEES - - - 25                            |
| CONTRACTS PARTLY PERFORMED :<br>ACQUIESCEENCE - - - - - 16 | COMMITTEES FOR SPECIAL PUR-<br>POSES - - - - - 26           |
| ABSENCE OF SEAL - - - - - 16                               | STANDING ORDERS AS TO CON-<br>TRACTS - - - - - 26           |
| AFFIXING OF SEAL - - - - - 17                              | CONTRACTS OF BURIAL AUTHORITY-<br>TIES - - - - - 27         |
| WITHDRAWAL OF OFFER BEFORE<br>SEALING - - - - - 17         | TRADE UNION RESTRICTIONS - - - 27                           |
| REPRESENTATIONS AND WAR-<br>RANTIES - - - - - 17           | BREAKING A CONTRACT OF SER-<br>VICE - - - - - 27            |
| ALTERATION OF TERMS, VARIATIONS<br>AND EXTRAS - - - - - 18 | FAIR WAGE CLAUSES, ETC. - - - 28                            |
| ARBITRATION CLAUSES - - - - - 19                           | FOREIGN GOODS. THE KING'S<br>ROLL - - - - - 28              |
| CERTIFICATES - - - - - 19                                  | LIABILITY OF INDIVIDUAL MEM-<br>BER OF COUNCIL - - - - - 28 |
| LIQUIDATED DAMAGES - - - - - 20                            |   |
| SURETIES - - - - - 20                                      |   |
| RECTIFICATION AND RESCISSION - 21                          |   |

*See also titles : COMMON LAW CORPORATION ;  
COMMON SEAL.*

FOR THE GENERAL LAW RELATING TO CONTRACT, *See HALSBURY'S LAWS OF ENGLAND*  
(2ND ED.), VOL. 7, TITLE "CONTRACT."

**Introduction.**—Local authorities are corporate bodies incorporated either by Royal Charter, as in the case of municipal corps., or by statute, as in the case of county councils, district councils and parish councils. Municipal corps. consist of the mayor, aldermen and burgesses of the borough, but all their functions are exercised by the council of the borough (a). [32]

The contracts of these local authorities are mainly regulated by the general law applicable to corps., subject to statutory modification, and statutory power is given to local authorities to enter into contracts which are necessary for the discharge of any of their functions (b). [33]

In the past considerable difficulty has been caused by sect. 174 of the P.H.A., 1875 (c), which required special regulations to be observed by borough and urban district councils in entering into contracts for public health purposes, differing from the regulations applicable when the contract was not made for the purposes of the P.H.A., 1875. Uniformity has been achieved by the repeal by the L.G.A., 1933, of sect. 174 of the Act of 1875 and other enactments governing contracts of various authorities. A large number of legal decisions will thus

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(a) L.G.A., 1933, s. 17 ; 26 Statutes 313.

(b) *Ibid.*, s. 266 ; 26 Statutes 447.

(c) 13 Statutes 698.

become obsolete, and henceforward (d) the following principles will apply to all local government contracts, subject to any special statutory modifications as respects particular authorities. [34]

For the regulations in sect. 174 of the P.H.A., 1875, the Legislature has merely substituted a provision that all contracts made by a county, borough, district or parish council or by a committee of any such council (e) shall be made in accordance with standing orders made by the council (f). Where contracts are for the supply of goods or materials, or are for the execution of works, the standing orders must require (subject to such exceptions as the standing orders may prescribe) the publication of a notice of the intention of the council or committee to enter into the contract and also of an invitation to send in tenders (g). The manner in which such notice is to be published and tenders are to be invited is also to be regulated by the standing orders (h). [35]

A person who enters into a contract with any such council is not to be bound to inquire whether there has been a compliance with the standing orders of the council which apply to the contract. Any such contract, if otherwise valid, has full force and effect in spite of the fact that the standing orders which are applicable have not been complied with (i). [36]

**Necessity for Seal.**—In general the proper legal mode of authenticating the act of a corpn. is by means of their seal being affixed to a document (k), that being their only appropriate method of expression (l). The seal when affixed is equivalent to the signature of a private person (m).

Certain local authorities (parish councils and parish meetings) do not possess corporate seals, and to meet their needs it is provided by statute that where an instrument under seal is required, any act of a parish council may be signified under the hands and seals of two members (n) and of a parish meeting under the hands and seals of the person presiding at the parish meeting and two other local government electors there present (o).

The effect of the absence of the seal where essential (p) is that neither the corpn. nor the other party can succeed in an action upon an agreement which lacks it (q). (See also title COMMON LAW CORPORATION.) [37]

**Presumption of Due Execution.**—At common law, where the corporate seal has been affixed by persons who properly have custody of it

(d) The repealed provisions will still be effective with regard to any right or liability incurred before June 1, 1934, see L.G.A., 1933, s. 307 (3); 26 Statutes 470, and Interpretation Act, 1889, s. 38; 18 Statutes 1005.

(e) See *post*, p. 25, with regard to contracts by committees.

(f) L.G.A., 1933, s. 266 (2); 26 Statutes 447.

(g) *Ibid.*, s. 266 (2) (a).

(h) *Ibid.*, s. 266 (2) (b).

(i) *Ibid.*, s. 266 (2). See also *post*, p. 14 (effect of the Law of Property Act, 1925, s. 74).

(k) *Austin v. Bethnal Green Guardians* (1874), L. R. 9 C. P. 91, *per Lord COLE-RIDGE*, C.J., at p. 94; 13 Digest 382, 1114.

(l) *Diggle v. London and Blackwall Rail. Co.* (1850), 5 Exch. 442; 13 Digest 380, 1105.

(m) *Darxford Guardians v. Trickett* (1888), 59 L. T. 754; 13 Digest 381, 1106.

(n) L.G.A., 1933, s. 48 (3); 26 Statutes 329.

(o) *Ibid.*, s. 47 (2).

(p) See *post*, p. 14; exceptions to the general rule that a seal is necessary.

(q) *Oxford Corpn. v. Crow*, [1898] 3 Ch. 535; 13 Digest 387, 1143; *Kidderminster Corpn. v. Hardwick* (1873), L. R. 9 Exch. 13; 13 Digest 390, 1163.

to a deed which the corpn. have power to execute, there is a presumption that the preliminary proceedings have been duly effected (*r*), and if no special formalities are prescribed by statute or charter there is also a presumption that the seal was affixed with due authority (*s*). In either case the presumption may be rebutted (subject to the following paragraph), and if it is proved that the preliminaries were not duly effected, or that there was no authority to affix the seal, the corpn. will not be bound (*t*).

Sect. 74 of the Law of Property Act, 1925 (*u*), has given an important protection to persons who purchase property from corpsns. in good faith for valuable consideration, including lessees and mortgagees who for valuable consideration acquire an interest in property (*a*). In such cases, where a seal has been affixed to a deed in the presence of, and has been attested by a clerk, secretary or other permanent officer of a corpn. or his deputy, and a member of the council or other governing body, the deed is deemed to have been duly executed by the corpn. Further, where a seal purporting to be the seal of a corpn. has been affixed to a deed, attested by persons purporting to hold such offices, the deed is deemed to have been executed in accordance with the above requirements and to have taken effect accordingly.

It should be noted that where the party entering into a contract with the corporation is not a purchaser (for example where the contract is one of employment) the above provision would afford no protection where it is proved that there has in fact been no due execution (*b*).

In the case of parish councils and parish meetings, instruments purporting to have been executed under the seals of individuals in the manner authorised by sects. 47 (2) and 48 (3) of the L.G.A., 1933, are deemed to have been so executed until the contrary is proved (*c*).

**[38]**

**Exceptions to Necessity of Seal.**—There are a number of recognised exceptions to the rule that a corporate body must contract under seal. Any corpn. aggregate may by resolution or otherwise appoint an agent either generally or in any particular case, to execute on behalf of the corpn. any agreement or other instrument not under seal in relation to any matter within their powers (*d*), and where a council are a corporate body, this course could be adopted by them.

A corpn. need not contract under seal in trivial matters of frequent occurrence, or in matters of urgency (*e*). Examples of the former are a contract to take gas from a gas company (*f*), a contract by a municipal authority as owners of a graving dock with shipowners for use of the

(*r*) *Clarke v. Imperial Gas Light Co.* (1832), 4 B. & Ad. 315; 13 Digest 286, 175.

(*s*) *Re Barnet's Banking Co., Ex parte Contract Corpn.* (1867), 3 Ch. App. 105; 13 Digest 288, 188.

(*t*) *Clarke v. Imperial Gas Light Co., supra.*

(*u*) 15 Statutes 248.

(*a*) The definition of purchaser is contained in s. 205 (1) (xxi.) (15 Statutes 288) of the above Act. It may include "intending purchaser."

(*b*) *Clarke v. Imperial Gas Light Co., supra.*

(*c*) L.G.A., 1933, ss. 47 (2), 48 (3); 26 Statutes 328, 329.

(*d*) Law of Property Act, 1925, s. 74 (2); 15 Statutes 248.

(*e*) *Diggle v. London and Blackwall Rail. Co.* (1850), 5 Exch. 442; 13 Digest 380, 1105; *Austin v. Bethnal Green Guardians* (1874), L. R. 9 C. P. 91; 13 Digest 382, 1114.

(*f*) *Church v. Imperial Gas Light and Coke Co.* (1888), 6 Ad. & El. 846; 13 Digest 285, 169; *City of London Gas Light and Coke Co. v. Nicholls* (1826), 2 C. & P. 365, N.P.; 13 Digest 388, 1148.

dock while repairing (g); also the appointment of subordinate servants (h). [39]

Though the principle relating to matters of urgency seems to be well established (i) decided cases do not afford examples. It is submitted that such matters of urgency would not include a purchase of real estate, and would be confined to simple matters of frequent occurrence. [40]

A trading corpn. may make contracts connected with the objects of the particular undertaking without using its seal (k). Examples are contracts for the supply of gas by a gas company (l), by a steamship company to bring home an unseaworthy boat (m), by a colliery company for the supply of a pumping engine (n). It is possible that this exception includes a local authority maintaining a trading undertaking, such as for the supply of electricity under statutory powers, when contracting for the purposes of that undertaking (o). [41]

Whenever the purposes for which a corporate body are created make it necessary that work should be done or goods supplied to carry such purposes into effect, and the corpn. orders such work to be done or goods to be supplied for those purposes, and the work is performed or goods accepted by the corpn. and the whole consideration for payment is executed, then the corpn. cannot rely on the absence of a contract under seal as a defence to an action for work done or goods supplied (p). The above principle has been applied in a number of cases and local authorities in these circumstances have been held liable upon contracts for the supply of water closets to a workhouse (q), for the preparation of the plans of a sewerage scheme (r), for the employment of an accountant to audit the books of a clerk suspected of fraud (s), for the services of an architect (t) and an engineer (u) who claimed on a *quantum meruit*. Similarly, a corpn. which entered into a parol agreement to abandon claims in the bankruptcy of a mortgagor in consideration of a release of the equity of redemption in the mortgaged property was held to be bound by the agreement (a). The contract must have been

(g) *Wells v. Kingston-upon-Hull Corpn.* (1875), L. R. 10 C. P. 402; 13 Digest 388, 1150.

(h) *Comyn's Digest*, title "Franchise," F. 13; *Ludlow Corpn. v. Charlton* (1840), 6 M. & W. 815; 13 Digest 285, 170. The position in regard to employees is dealt with, *post*, p. 22.

(i) See, for example, *Diggle v. London and Blackwall Rail. Co.* (1850), 5 Exch. 442, *per Pollock*, C.B., at p. 449; 13 Digest 380, 1105.

(k) *Church v. Imperial Gas Light and Coke Co.* (1838), 6 Ad. & El. 846; 13 Digest 285, 169.

(l) *Ibid.*

(m) *Henderson v. Australian Royal Mail Steam Navigation Co.* (1855), 5 E. & B. 409; 13 Digest 389, 1153.

(n) *South of Ireland Colliery Co. v. Waddle* (1868), L. R. 3 C. P. 463; 13 Digest 389, 1155.

(o) Cf. *Bourne and Hollingsworth v. St. Marylebone Borough Council* (1908), 72 J. P. 129 (reversed on other grounds, 72 J. P. 306, C. A.); 13 Digest 389, 1156, and *Wells v. Kingston-upon-Hull Corpn.*, *supra*. There is a conflict of authority.

(p) *Lawford v. Billericay R.D.C.*, [1903] 1 K. B. 772, C. A.; 13 Digest 394, 1193, following *Clarke v. Cuckfield Guardians* (1852), 21 L. J. (Q. B.) 349; 13 Digest 393, 1184.

(q) *Clarke v. Cuckfield Guardians*, *supra*.

(r) *Lawford v. Billericay R.D.C.*, *supra*.

(s) *Haigh v. North Brierley Guardians* (1858), E. B. & E. 873; 13 Digest 394, 1188.

(t) *Hodge v. Matlock Bath U.D.C.* (1910), 75 J. P. 65; 13 Digest 395, 1194.

(u) *Douglass v. Rhyl U.D.C.*, [1913] 2 Ch. 407; 13 Digest 386, 1135.

(a) *Melbourne Banking Corpn. v. Brougham* (1879), 4 App. Cas. 156, P. C.; 13 Digest 393, 1182.

executed or it will not be capable of being sued upon unless under seal (*b*), and must be incidental to purposes for which the corpn. was constituted. Therefore, where a highway board retained solicitors to oppose a Bill in Parliament (the retainer not being under seal), and such opposition was not incidental to the purposes for which the board were constituted, the solicitors were held to have no right of action (*c*).

The above exception is now clearly established, and earlier cases which are in conflict with it must be disregarded. [42]

Similarly, where a corpn. has performed its part of a contract and the other party has received the full consideration, that other party cannot rely on the absence of a contract under seal as a defence (*d*). [43]

**Compromises.**—Where matters are in dispute between a corpn. and another party, whether an action has been commenced or not, and such matters are the subject of an agreement to compromise all claims, both parties are bound by the agreement though it is not under seal (*e*). [44]

**Contracts Partly Performed : Acquiescence.**—The courts may decree specific performance of a contract, which otherwise would be invalid for want of a seal, where there have been acts of part performance by one party on the faith of the contract, and fraud and injustice would result from allowing the other party to refuse to perform his part of the contract (*f*). Expenditure under a prospective lease where one party has stood by while the other has taken possession and paid rent (*g*) or taken possession and erected a wharf (*h*) or a wall (*i*) has been held sufficient to warrant a decree of specific performance. So also where opposition to a Parliamentary Bill was withdrawn on the faith of a promise to perform certain acts, the party receiving the benefit of the agreement was held bound to perform the particular acts (*k*). But if one party agrees to act for a corpn. knowing that it is for a purpose which is not essential to the objects for which the corpn. is formed, a claim for specific performance in such circumstances will fail (*l*). [45]

**Absence of Seal.**—Where an unsealed contract has been entered into by a local authority and an action is brought upon it by the other party the local authority are not bound to set up the absence of seal by way of defence. There is as much justification for not doing so, as there would be in not setting up the Statute of Limitations (*m*).

(*b*) *Start v. West Mersea School Board* (1899), 63 J. P. 440; 13 Digest 396, 1201.

(*c*) *Phelps v. Upton Snodsbury Highway Board* (1885), 49 J. P. 408; 13 Digest 384, 1122.

(*d*) *Fishmongers' Co. v. Robertson* (1843), 5 M. & G. 131; 13 Digest 386, 1138.

(*e*) *Williams v. Barmouth U.D.C.* (1897), 77 L. T. 383, C. A.; 13 Digest 385, 1134 (where the local authority was held to be bound); *A.-G. v. Gaskill* (1882), 22 Ch. D. 537; 33 Digest 36, 192, and *Leicester Guardians v. Trollope* (1911), 75 J. P. 197; Digest (Supp.) (cases where the other party was held to be bound).

(*f*) *Steevens Hospital v. Dyas* (1868), 10 L. T. 882; 13 Digest 395 (*f*).

(*g*) *Ibid.*

(*h*) *Marshall v. Queenborough Corpn.* (1828), 1 Sim. & St. 520; 13 Digest 397, 1210.

(*i*) *Crook v. Seaford Corpn.* (1871), 6 Ch. App. 551; 13 Digest 397, 1207.

(*k*) *Edwards v. Grand Junction Rail. Co.* (1836), 1 My. & Cr. 650; 13 Digest 392, 1170.

(*l*) *Crampton v. Varna Rail. Co.* (1872), 7 Ch. App. 562; 13 Digest 398, 1212.

(*m*) *Bournemouth Commissioners v. Wadts* (1884), 14 Q. B. D. 87; 13 Digest 385, 1133.

Further, if work has been done for a local authority in such circumstances, which has been paid for, it is not open to a third party to set up the absence of seal. Hence a local authority recovered from a frontager the requisite proportion of the cost of work done under sect. 150 of the P.H.A., 1875 (*n*), when the contract between the authority and the actual contractor was not under seal (*o*).

A defendant to an action must plead all matters which show that an action is not maintainable, and a bare denial of a contract is only a denial of the fact of such contract and not a denial of its legality or sufficiency. It follows that if a local authority desires to set up the absence of their seal as a defence, this defect must be set out in the pleadings [*p*]. [*46*]

**Affixing of Seal.**—The seal is normally affixed to the contract itself, but it may be affixed to a resolution accepting a tender, recording an officer's appointment or adopting the action of a committee.

A seal may be attached to a letter making or accepting an offer. Where it is attached to an offer, a binding contract results when the offer is duly accepted (*q*).

Where a sealed document, such as an acceptance of a tender, is relied on, the materials of a complete contract must exist. If material details are left unconcluded, or conditions remain unfulfilled, the sealing of a document is not sufficient to constitute a contract. Hence, where a local authority sent a sealed letter accepting a tender, it was held that there was no concluded agreement, since it was a condition of the contract that the person tendering should execute a contract for the due performance of the works contemplated and enter into a bond with two responsible sureties and those conditions had not been fulfilled (*r*). [*47*]

**Withdrawal of Offer before Sealing.**—Where a contract is required to be under seal, a party may withdraw a tender up to such time as it is accepted under seal, unless there has been part performance or the contract has been acted upon by the other party (*s*). [*48*]

**Representations and Warranties.**—It is a usual term of contracts for work to be done that all representations as to the nature of the work must be verified by the contractor. Such a term does not absolve a council from liability in the event of a fraudulent misrepresentation by the council or their servant, and it is to be noted that representations made recklessly without regard to their truth or falsity are fraudulent. So, in these circumstances, when the plans and specifications prepared by the council showed the existence of a sunken wall, when in fact the wall did not exist and it was alleged that the misrepresentation was fraudulent, the council were held liable, as honesty is contemplated on both sides and only honest mistakes are protected (*t*). So also a

(*n*) 13 Statutes 686.

(*o*) *Bournemouth Commissioners v. Watts* (1884), 14 Q. B. D. 87; 13 Digest 385, 1133. The contention that the frontager was not liable was based on s. 174 of the above Act, which required contracts of £50 and over made by an urban authority to be under seal. The proposition applies with greater force under the ordinary law.

(*p*) R.S.C., Order 19, rr. 15, 20.

(*q*) *Dartford Guardians v. Trickett* (1889), 5 T. L. R. 619 (C. A.); 13 Digest 381, 1106.

(*r*) *Borson v. Altringham U.D.C.*, [1903] 1 K. B. 547; 33 Digest 37, 204.

(*s*) *Kidderminster Corpn. v. Hardwick* (1873), L. R. 9 Ex. 13; 13 Digest 390, 1163. See also *Oxford Corpn. v. Crowe*, [1893] 3 Ch. 535; 13 Digest 387, 1143; *Dartford Guardians v. Trickett*, *supra*.

(*t*) *Pearson v. Dublin Corpn.*, [1907] A. C. 351; 7 Digest 447, 467.

contractor who declined to go on with his contract recovered his deposit, where he had been told by the council's engineer that the conditions of a contract were ordinary and they proved to be unusual (u).

[49]

On the other hand there is no implicit warranty by a council that the work contemplated can be successfully carried out according to plans and specifications prepared for the use of persons tendering (a).

[50]

Terms or conditions cannot be implied if they are inconsistent with the express provisions of a contract, or with the intention of the parties as gathered from those provisions (b), nor can a contract be extended to introduce a term which may make the carrying out of the contract more convenient, and which might have been included if the parties had thought about it (c). But a provision in a contract for street improvements to the effect that the contractors should be paid when the sums due from the frontagers were collected by the council was held not to preclude recovery of the amount due to the contractors, upon it transpiring that the council could not recover from the frontagers owing to defects in the notices, it being an implied term of the contract that the council should do all that was necessary to collect the money (d).

[51]

It is to be noted that the Public Authorities Protection Act, 1893 (e), does not apply to actions for breach of contract (f). [52]

**Alteration of Terms, Variations and Extras.**—Alterations in the terms of a contract may be valid if assented to before the contract is sealed. So where a contract requiring a seal is contemplated between a local authority and another contracting party, and that party signs a contract which is sent on to the authority for sealing and is altered by them, then if the alteration is assented to before the seal is affixed the contract as altered is good (g).

Where a contract with a local authority contains a clause empowering the authority's engineer who has control and supervision of the work to alter, enlarge or diminish the works specified in a contract under seal, then those variations and alterations coming within the terms of the power conferred on the engineer can be validly made without being under the corporate seal (h). Such a clause is strictly interpreted, and where, for example, it was a term of a contract that an architect should give written instructions for alterations, and certificates were given from time to time in the form of letters to the clerk of the board mentioning some of the work in progress, it was held that the term had not been fulfilled and the contractor failed to recover (i). But where extras were not provided for in a contract under seal, it has been

(u) *Moss & Co. v. Swansea Corpns.* (1910), 74 J. P. 351; 7 Digest 332, 10.

(a) *Thorn v. London Corpns.* (1876), 1 App. Cas. 120; 12 Digest 370, 3084.

(b) *Tamplin S.S. Co. v. Anglo-Mexican Petroleum Co.*, [1916] 2 A. C. 397; 12 Digest 612, 5056.

(c) *Re Nott and Cardiff Corpns.*, [1918] 2 K. B. 146; 12 Digest 612, 5053.

(d) *Worthington v. Sudlow* (1862), 2 E. & S. 508; 38 Digest 171, 143.

(e) 18 Statutes 455. See also title PUBLIC AUTHORITIES PROTECTION ACT.

(f) *Clarke v. Lewisham Borough Council* (1902), 67 J. P. 195; 38 Digest 109, 781.

(g) *Dartford Guardians v. Trickett* (1888), 59 L. T. 754, approved (1889), 5 T. L. R. 619, C. A.; 13 Digest 381, 1106.

(h) *Williams v. Barmouth U.D.C.* (1897), 77 L. T. 383, C. A.; 13 Digest 385, 1134 (a decision under s. 174 (repealed) of the P.H.A., 1875; 13 Statutes 698).

(i) *Lamprell v. Billericay Union* (1849), 3 Exch. 283; 7 Digest 384, 212.

held that a contractor who has executed them with the approval of the engineer could not recover (*k*).

It is thought that if "extras" represent the subject of a new contract superimposed upon the original contract, and the principles with regard to part performance or ratification (*l*) apply, or where necessary work has been wholly performed at the request of a corpn. (*m*) probably a contractor would succeed in recovering. [53]

**Arbitration Clauses.**—The courts are reluctant to interfere with the terms of a contract in which the parties have agreed to submit any dispute to arbitration, and the onus is on the plaintiff to show that some sufficient reason exists why a dispute should not be so referred (*n*).

It frequently happens that the arbitrator appointed by a contract to decide disputes is the engineer or some other officer of a council; in such circumstances the court will only interfere where it is clear that there is reason to suppose that he will act unfairly (*o*). It does not necessarily follow that an engineer who has already expressed an adverse view will be unfair (*p*), and it has been held that he is not disqualified by the mere fact that he may have to decide disputes which involve the question whether he has himself acted with skill and competence in advising his employers as to the carrying out of the contract (*q*), though where a personal dispute existed between the contractor and engineer and the latter had expressed a strong opinion amounting to pre-judgment it was held that he was unsuitable as an arbitrator (*r*). [54]

**Certificates.**—Where a council enter into a building contract and an engineer or architect is employed by them to supervise the work, progress and final certificates are usually issued to the contractor. The granting of certificates may be made a condition precedent to payment either expressly or impliedly (*s*). Such an implication can only arise where the engineer or other person is required to exercise skill and judgment, or act in a *quasi-judicial* character when giving his certificate, as for example when he has to value or approve work done (*t*). A certificate is not a condition precedent to payment where there is no exercise of skill or judgment, as where the certificate only evidences the receipt and delivery of goods (*u*).

A final certificate is not conclusive if it can be reviewed by an arbitrator (*a*), or the certifier has not properly exercised his judgment thereon (*b*), or it is not within his powers (*c*).

(*k*) *Homersharn v. Wolverhampton Waterworks Co.* (1851), 6 Exch. 137; 7 Digest 378, 181.

(*l*) See *post*, pp. 21, 22.

(*m*) See *ante*, p. 15.

(*n*) *Hodgson v. Railway Passengers' Assurance Co.* (1882), 9 Q. B. D. 188, C. A.; 2 Digest 365, 339.

(*o*) *Ives v. Willans*, [1894] 2 Ch. 478; 2 Digest 370, 363.

(*p*) *Jackson v. Barry Rail. Co.*, [1893] 1 Ch. 238; 2 Digest 379, 424.

(*q*) *Eckersley v. Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667, C. A.; 2 Digest 370, 362.

(*r*) *Nuttall v. Manchester Corpn.* (1892), 8 T. L. R. 513; 2 Digest 369, 361, as explained in *Eckersley's Case, supra*.

(*s*) *Glenn v. Leech* (1853), 1 C. L. R. 569; 7 Digest 350, 74; *Wallace v. Brandon and Byshottles U.D.C.* (1903), 2 Hudson's B. C., 4th ed., 362, C. A.; 7 Digest 351, 80.

(*t*) *Glenn v. Leech, supra*.

(*u*) *Morgan v. Larivière* (1875), L. R. 7 H. L. 423; 1 Digest 593, 2305.

(*a*) *Robins v. Goddard*, [1905] 1 K. B. 294, C. A.; 7 Digest 359, 108.

(*b*) *Goodyear v. Weymouth and Melcombe Regis Corpn.* (1865), 35 L. J. (C. P.) 12; 7 Digest 381, 199.

(*c*) *Lawson v. Wallasey Local Board* (1882), 11 Q. B. D. 229; 7 Digest 432, 394.

Improper interference by the employer, though not fraudulent, in influencing the certifier will prevent the certificate from being binding (*d*).

Where the certifier is referred to as "the engineer for the time being," or by name with the addition "or other the engineer for the time being" the person who properly gives the certificate would appear to be the person filling the description at the time when the certificate is to be given (*e*). [55]

**Liquidated Damages.**—The parties to a contract may agree upon a liquidated sum payable as damages upon a breach of the contract. If this sum is in reality a penalty it cannot be recovered. The distinction between a penalty and liquidated damages depends upon the intention of the parties as gathered from the whole of the contract. If the intention is to secure performance of the contract by the imposition of a fine or penalty, then the sum specified is a penalty; but if the intention is to assess the damages for breach of the contract, it is liquidated damages (*f*). If the sum is payable on the happening of a specified event it is to be regarded as liquidated damages, as where it was provided that the works should be completed in all respects and cleared by a specified date and that in default the contractor should pay £100 and £5 for each week until completion, the necessary completion and clearing of the works being held to be a single event. On the other hand, if the sum is payable on the happening of several events some of which would entail very trifling damage, then it is to be regarded as a penalty. And where a larger sum is payable upon the non-payment of a smaller specified sum the larger sum will be treated as a penalty (*g*). [56]

**Sureties.**—It is probable that councils will find it advisable to continue the practice of requiring a guarantee by sureties for the due performance of important contracts, though the direction to take sufficient security in regard to contracts of £100 and upwards in sect. 174 of the P.H.A., 1875, has been repealed (*h*).

Where a surety guarantees the required amount it is essential that all details of the contract should be given to him, since the withholding of any fact which might have deterred him from becoming a surety may relieve him of any obligation to the council. Where, for example, a council represented that a contract would be supervised by their surveyor, when they had agreed that the surveyor of a neighbouring land-owner should be associated with the council's surveyor, the concealment of this arrangement was held sufficient to discharge the surety from liability (*i*).

Where a contractor has been guilty of fraudulent acts or omissions such as a concealment of defective work, the surety is still liable though the council by exercising their rights of superintendence might have

(*d*) *Hickman & Co. v. Roberts*, [1913] A. C. 229; 7 Digest 357, 97.

(*e*) *Ranger v. Great Western Rail. Co.* (1854), 5 H. L. Cas. 72; 7 Digest 361, 113.

On this point, see Halsbury's Laws of England (2nd ed.), Vol. 3, pp. 335, 336, and pp. 241 *et seq.* regarding building contracts generally.

(*f*) *Law v. Redditch Local Board*, [1892] 1 Q. B. 127, *per LOPES, L.J.*, at p. 132; 17 Digest 138, 428.

(*g*) *Ibid.* On the subject of penalties, see also *Strickland v. Williams*, [1899] 1 Q. B. 382; 17 Digest 147, 502; *Dunlop Tyre Co. v. New Garage and Motor Co.*, [1915] A. C. 79; 17 Digest 138, 426.

(*h*) By L.G.A., 1933, s. 307 and Eleventh Schedule, Part I.; 26 Statutes 469, 516.

(*i*) *Stiff v. Eastbourne Local Board* (1868), 19 L. T. 408; 7 Digest 429, 382.

discovered the defects and have been entitled to withhold the final certificate and retention money (*k*). The basis of this decision seems to be that a surety cannot claim to be discharged on the ground that his position has been altered by the conduct of the person to whom the guarantee has been given, where that conduct has been caused by a fraudulent act or omission on the part of the person guaranteed by the contract of suretyship (*l*).

It has been held that where no express provision was contained in a contract between a council and a contractor that the latter should pay the costs of any unsuccessful litigation between them, a surety was not liable to pay the costs, as the contractor's liability to do so arose under the judgment and not under the contract (*m*).

Where contractors failed to carry out their contract and a council engaged another firm to complete it, but the completion did not take place until six weeks after the date specified in the original contract, it was held that the sureties were not liable to pay liquidated damages in respect of the delay, since such a clause applied only where the original contractor had himself completed the contract, not where the control of the contract had passed out of his hands (*n*).

A surety's liability will cease where the amount of work to be done is added to, or the time of construction lengthened (*o*), so also if any payment is made by the employer to the contractor without the surety's knowledge and consent before payment is due (*p*). [57]

**Rectification and Rescission.**—It would appear that where a contract is required to be under seal, as by sect. 174 of the P.H.A., 1875 (*q*), and the contract has been duly sealed it is then impossible for the court to rectify the terms of the contract, even where there has been a mutual mistake by the contracting parties. In such a case no contract whatever exists until the seal is affixed and there can be therefore no pre-existing parol contract to which rectification could be referred. Also the court if it rectified in these circumstances would be binding one of the parties to a contract (namely the rectified contract) which could not exist till it had been sealed, and which, *ex hypothesi*, could not have been sealed and therefore did not exist (*r*). But if a mistake has been innocently induced by one party, or where a proper case for rescission can be made out, the court will grant such relief (*s*). [58]

**Ratification under Seal.**—A local authority may ratify under seal a contract which, if it had been made by the authority, would have

(*k*) *Kingston-upon-Hull Corpn. v. Harding*, [1892] 2 Q. B. 494; 7 Digest 429, 383.

(*l*) *Ibid.*, at p. 504, *per Bowen, L.J.*

(*m*) *Hoole U.D.C. v. Fidelity and Deposit Co. of Maryland*, [1916] 1 K. B. 25; 7 Digest 430, 384. It should be noted that though this decision was affirmed on appeal, [1916] 2 K. B. 568, no opinion was expressed on the proposition stated in the text, the court deciding that there had been a departure by the plaintiffs from the original contract.

(*n*) *British Glanzstoff Manufacturing Co. v. General Accident Fire and Life Assurance*, [1913] A. C. 143; 7 Digest 395, 244.

(*o*) *Harrison v. Seymour* (1866), L. R. 1 C. P. 518; 7 Digest 428, 381; *Midland Motor Showrooms, Ltd. v. Newman*, [1929] 2 K. B. 256, C. A.; Digest (Supp.).

(*p*) *General Steam Navigation Co. v. Rolt* (1858), 6 C. B. (N. S.) 550; 7 Digest 428, 378.

(*q*) 13 Statutes 698.

(*r*) *Higgins, Ltd. v. Northampton Corpn.*, [1927] 1 Ch. 128; 35 Digest 101, 87; *Faraday v. Tamworth Union* (1916), 86 L. J. Ch. 436; 13 Digest 380, 1103. The former case was decided upon s. 174 (*repealed*) of the P.H.A., 1875 (13 Statutes 698), but it is submitted that the reasoning applies wherever a contract by a local authority is required to be under seal.

(*s*) *Faraday v. Tamworth Union, supra*.

required to be under seal (*t*). It is not necessary that the other contracting party should seal the contract (*u*). If work is done at the request of a local authority but there is no contract under seal, and subsequently the authority seal a promise to pay, such promise is binding though in respect of a past consideration. Hence, where unsealed resolutions of an authority were sent from time to time to the plaintiff and work was done under them, the resolutions being subsequently sealed, the plaintiff recovered, as the confirmed resolutions amounted to a promise to pay (*a*).

A contract cannot be ratified after the offer contained in it has been withdrawn. A lessee of buildings belonging to a municipal corp<sup>n</sup>. offered to surrender his lease on certain terms, and a committee of the council not appointed under seal accepted his offer; the council approved the contract, but not under seal, and notice of approval was sent to the lessee by the town clerk. Later the lessee withdrew his offer and it was held that the contract could not be enforced by the corp<sup>n</sup>. (*b*). Similarly it is too late to ratify when there has been a breach of contract by the other party (*c*). Where an unsealed contract was entered into and partially completed, and a memorandum under seal recited the previous agreement and purported to confirm it, it was held that there was a valid contract between the parties (*d*). [59]

**Contracts with Agents and Servants.**—Where a corporate body appoint an inferior servant to do ordinary services the appointment may be made without a deed, as for example in the case of a butler (*e*). Normally a contract of employment between a local authority and an officer appointed by them must be under the corporate seal, even where the particular statute constituting the local authority does not contain any direction for the use of the seal in such a case. It has been held that a clerk to a workhouse master (*f*), a rate collector appointed by poor law guardians (*g*) or a medical officer of a board of guardians (*h*) must be appointed under seal. Particular statutes may allow certain appointments to be made without a sealed contract, as where an architect to a school board was held to be a "necessary officer" within the meaning of the Elementary Education Act, 1870 (*i*), and so capable of being appointed by a signed minute of appointment (*k*). See also

(*t*) *Kidderminster Corp<sup>n</sup>. v. Hardwick* (1873), L. R. 9 Exch. 13; 13 Digest 390, 1163.

(*u*) *Brooks, Jenkins & Co. v. Torquay Corp<sup>n</sup>.*, [1902] 1 K. B. 601; 13 Digest 390, 1165.

(*a*) *Ibid.*

(*b*) *Oxford Corp<sup>n</sup>. v. Crow*, [1893] 3 Ch. 535; 13 Digest 387, 1143. The case of *Bolton Partners v. Lambert* (1889), 41 Ch. D. 295; 12 Digest 82, 481, where it was said that ratification could relate back to an acceptance is of doubtful authority.

(*c*) *Kidderminster Corp<sup>n</sup>. v. Hardwick, supra.*

(*d*) *Melliss v. Shirley Local Board* (1885), 14 Q. B. D. 911, reversed on other grounds (1886), 16 Q. B. D. 446, C. A.; 13 Digest 390, 1164.

(*e*) *Horne v. Ivy* (1670), 1 Mod. Rep. 18; 13 Digest 381, 1107, and see *ante*, p. 14 (contracts for matters of trivial importance).

(*f*) *Austin v. Bethnal Green Guardians* (1874), L. R. 9 C. P. 91; 13 Digest 382, 1114.

(*g*) *Smart v. West Ham Union Guardians* (1855), 10 Exch. 867; 13 Digest 382, 1111.

(*h*) *Dyte v. St. Pancras Guardians* (1872), 27 L. T. 342; 13 Digest 382, 1113.

(*i*) 33 & 34 Vict. c. 75, s. 30 (repealed).

(*k*) *Scott v. Clifton School Board* (1884), 14 Q. B. D. 500; 13 Digest 382, 1115. And see *Start v. West Mersea School Board* (1899), 15 T. L. R. 442; 13 Digest 396, 1201.

"Exceptions to Necessity for Seal," with regard to the appointment of an agent (*l*).

The retainer or appointment of a solicitor must be under seal. This is so whether he is already a servant of the corporation, as a town clerk already appointed as such under seal, and the council propose to employ him to do work as a solicitor (*m*) ; or where the council retain a solicitor to oppose a Bill in Parliament (*n*). [60]

**Member's Interest in Contracts.**—A member of a county, borough, district or parish council, who is present at a meeting of the council must disclose any direct or indirect pecuniary interest in any contract, proposed contract, or other matter which is the subject of consideration at that meeting. He must do this as soon as practicable after the commencement of the meeting, and must neither take part in the consideration or discussion of the contract or other matter, nor vote on any question with respect to it (*o*).

This requirement does not apply to an interest in a contract or matter which a member of a council may have as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public (*p*). [61]

The word "matter" is of a wider meaning than "contract" and, for example, would cover cases where a grant was given by the council towards the building or repair of houses in private ownership under the Housing Acts (*q*). [62]

Since June 1, 1934, no disqualification for election or for being a member of a council results from an interest in any contract with the council, disqualification now being directed to voting only and not to membership (*r*). [63]

A mayor or chairman is a member of the council, even though he may have been elected from outside the council (*s*). [64]

A member of a council has an indirect pecuniary interest in a contract or other matter if he or a nominee is a member of a company or other body with which the contract is made or is proposed to be made, or which has, in the case of other matters, a direct pecuniary interest therein (*t*).

Further, he has an indirect pecuniary interest if he is a partner of, or is employed by a person with whom the contract is made or proposed

(*l*) *Ante*, p. 14.

(*m*) *Arnold v. Poole Corpns.* (1842), 2 Dowl. (N. S.) 574; 13 Digest 383, 1116.

(*n*) *Sutton v. Spectacle Makers' Co.* (1864), 4 New Rep. 98; 13 Digest 384, 1121; *Phelps v. Upton Snodsbury Highway Board* (1885), 49 J. P. 408; 13 Digest 384, 1122.

(*o*) L.G.A., 1933, s. 76 (1); 26 Statutes 346, following the Companies Act, 1929, s. 149; 2 Statutes 872.

(*p*) *Ibid.*

(*q*) The word "matter" is taken from the equivalent (*repealed*) s. 22 (3) of the Municipal Corpsns. Act, 1882; 10 Statutes 584. The present sub-section was framed to include cases such as that mentioned in the text, see Interim Report (Cmd. 4272) of the Local Government and Public Health Consolidation Committee, p. 25.

(*r*) Owing to the various enactments which applied different rules to particular authorities, the former position was complicated. Uniformity has been achieved by the repeal of all rules resulting in such disqualification, leaving those safeguards mentioned in the present and subsequent paragraphs with regard to voting.

(*s*) See the terms of ss. 3 (3), 18 (3), 33 (4) of the L.G.A., 1933; 26 Statutes 307, 314, 320.

(*t*) *Ibid.*, s. 76 (2) (a); *ibid.*, 346.

to be made, or of a person who has a direct pecuniary interest in the other matter (*u*). **[65]**

It is to be noted that membership of, or employment under a public body does not involve any such indirect pecuniary interest (*a*) ; nor has a member of a company or other body an interest therein if he has no beneficial interest in any shares or stock of that company or other body (*b*). This covers the case of a person holding shares or stock as a trustee for another person. The members of a company are the subscribers of the memorandum of association and persons whose names are entered on the register of members (*c*). Debenture holders are not members. **[66]**

Where married persons are living together the direct or indirect interest of one spouse (if known to the other) is deemed to be also a direct or indirect interest of the other spouse for the purposes of sect. 76 of the L.G.A., 1933 (*cc*). **[67]**

Sect. 76 of the Act of 1933 contemplates either a disclosure at a meeting at which the member of a council with an interest is present, if the matter will be considered by the council, or a general notice of indirect interest. This general notice is to be in writing to the clerk of the council concerned, to the effect that the member or his spouse is a member of or in the employment of a specified company or other body, or that either is a partner or in the employment of a specified person. Such a notice will be deemed a sufficient disclosure of the member's interest in any contract, proposed contract or other matter relating to such company, body or person which may be the subject of consideration after the date of the notice (*d*). However small the interest may be, disclosure is the safer course. **[68]**

Disclosures made either at a meeting of the council or by a general notice in writing as above are to be entered by the clerk of the council in a book to be kept for the purpose. This book is to be open to the inspection of any member of the council at all reasonable hours (*e*), but is not open to inspection by a local government elector. **[69]**

In exceptional instances, a practical difficulty might arise where the number of members of a council disqualified from voting under the above provisions would be so great a proportion of the whole number of members that the transaction of business might be brought to a standstill (*f*). The county council (in the case of a member of a parish council) or the M. of H. (in the case of a member of any other council) in the circumstances described above, or in any other case in which it appears to the county council or the Minister (as the case may be) that it is in the interests of the inhabitants of the area that any disability imposed by the above provisions should be removed, may remove the disability, subject to any conditions they may see fit to impose (*g*).

A council may by standing orders provide for the exclusion of a member from a meeting whilst any contract, proposed contract or

(*u*) L.G.A., 1933, s. 76 (2) (b) ; 26 Statutes 347.

(*a*) *Ibid.*, s. 76 (2) (b) (i.).

(*b*) *Ibid.*, s. 76 (2) (b) (ii.).

(*c*) S. 25 of the Companies Act, 1929 ; 2 Statutes 788.

(*cc*) L.G.A., 1933, s. 76 (3).

(*d*) *Ibid.*, s. 76 (4).

(*e*) *Ibid.*, s. 76 (5).

(*f*) E.g., where a contract might be contemplated with a co-operative society to which a large number of members of the particular council belonged.

(*g*) L.G.A., 1933, s. 76 (8) ; 26 Statutes 347.

other matter in which he has an interest is under consideration (*h*). [70]

Any member of a council, who is present at a meeting of the council but fails to comply with sub-sect. (1) of sect. 76 of the Act, is liable to a fine not exceeding £50 on summary conviction, unless he proves that he did not know that a contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at the meeting. But a prosecution in respect of such an offence can be instituted only by or on behalf of the Director of Public Prosecutions (*i*). [71]

**Officer's Interest in Contracts.**—A duty to give notice in writing of any direct or indirect pecuniary interest (*k*) in a contract which has been or is proposed to be entered into by a county, borough, district or parish council (or a committee of any such council) is imposed on all officers employed by the council, upon this fact coming to his knowledge (*l*). The notice must be given as soon as practicable after the officer knows that he has an interest in the contract or proposed contract. This provision does not, however, apply to any contract to which the officer is himself a party.

An officer is to be treated as having an indirect pecuniary interest in a contract if he would have been treated as having such an interest under sect. 76 (2) or (3) of the Act had he been a member of the council (*m*).

A failure to give the notice required by s. 123 (1) of the Act renders the officer liable on summary conviction to a fine not exceeding £50 (*n*), but in this instance prosecutions are not restricted to the Director of Public Prosecutions and any one may apparently prosecute. [72]

**Contracts of Committees.**—The council of a county, borough, district or parish may delegate to a committee, with or without restrictions or conditions, any function of the council which in their opinion would be better regulated and managed by a committee, other than the power of levying, or issuing a precept for, a rate or of borrowing money (*o*).

Joint committees comprising any of the councils already mentioned may be given similar powers for the purposes for which the joint committee is formed (*p*).

It follows that a committee may be authorised to enter into contracts (*q*), though such contracts are made on behalf of the council or councils concerned. Where necessary (*r*) the seal of the appointing council or councils should be affixed to a contract.

By sect. 95 of the Act (*s*), the provisions of sect. 76, as to the disclosure by members of a council of interest in a contract, proposed contract or other matter to be considered by the council, are extended

(*h*) L.G.A., 1933, s. 76 (9); 26 Statutes 347.

(*i*) *Ibid.*, s. 76 (6) (7).

(*k*) See *ante*, p. 23.

(*l*) *Ibid.*, s. 123 (1).

(*m*) See *ante*, p. 23.

(*n*) *Ibid.*, s. 123 (3).

(*o*) *Ibid.*, s. 85 (1); 26 Statutes 352.

(*p*) *Ibid.*, s. 91 (1); *ibid.*, 355; and see title JOINT BOARDS AND COMMITTEES.

(*q*) The position is now uniform. Before the L.G.A., 1933, came into force, certain authorities, for example a county council appointing a committee could under the L.G.A., 1888, s. 28 (2) or s. 82 (2); 10 Statutes 707, 753, delegate powers of contracting to committees. On the other hand district councils and parish councils on appointing committees under the L.G.A., 1894, s. 56 (1) (*repealed*); 10 Statutes 812, could not do so. The position with regard to committees authorised or required to be appointed under special Acts is dealt with *infra*.

(*r*) See *ante*, pp. 13, 14.

(*s*) 26 Statutes 357. For the provisions of s. 76, see *ante*, pp. 23, 24.

to any committee or sub-committee of a council, or any joint committee appointed by agreement between councils, whether the appointment is made under Part III. of the Act or under any other enactment. Any member of any such committee, sub-committee or joint committee must therefore disclose to that body his interest, either at a meeting or by means of a general notice to the clerk of the council, or of the joint committee as the case may be. The right of a member of a committee or sub-committee who is not also a member of the appointing council to an inspection of the book in which notices of disclosure of interest are entered, is, however, limited to entries of notices given by members of the particular committee or sub-committee (*t*). It is no doubt contemplated that the clerk of a joint committee will keep a separate register relating to notices of disclosure of interest given by members of the joint committee. [73]

**Committees for Special Purposes.**—Under various statutes local authorities are authorised or required to appoint committees to whom special powers are given by the particular statutes, or to whom powers may be delegated by the appointing council. Such powers may include that of entering into contracts or particular kinds of contracts. In order to prevent overlapping, local authorities are prohibited from appointing committees under the general power given by sect. 85 of the L.G.A., 1933 (*u*), for any purpose for which they are authorised or required to appoint committees under particular statutes (*a*).

Certain statutory committees have wide powers which may either be given by the statute creating them, or conferred by the council in appointing them. Thus all matters relating to the exercise by the local education authority of powers as to education stand referred to the education committees by statute except the power to borrow money or to raise a rate, and the authority may delegate all or any of these powers to the education committee (*b*). Isolation hospital committees formed by county councils are bodies corporate having perpetual succession and a common seal. They are given power to acquire land, and the county council may delegate to them wide powers (*c*). The powers conferred by statute on the standing joint committees of quarter sessions and county councils are in terms sufficiently wide to enable them to make any contract necessary for carrying out the functions allotted to them (*d*). [74]

**Standing Orders as to Contracts.**—Contracts entered into by a council, or a committee with delegated powers, must be made in accordance with standing orders to be framed by the council (*e*). A council appointing a committee, and councils who concur in appointing a joint committee may make, vary and revoke standing orders respecting the quorum, proceedings and place of meeting of the committee or joint committee (*f*). The M. of H. have drawn up model standing orders as to

(*t*) L.G.A., 1933, para. (a) of s. 95; 26 Statutes 357.

(*u*) 26 Statutes 352.

(*a*) S. 85 (5).

(*b*) Education Act, 1921, s. 4; 7 Statutes 132, and see title EDUCATION COMMITTEE.

(*c*) Isolation Hospitals Act, 1893, s. 10 (2); 13 Statutes 864, and see title HOSPITAL AUTHORITIES.

(*d*) L.G.A., 1888, ss. 30, 81; 10 Statutes 708, 752, and see title STANDING JOINT COMMITTEES.

(*e*) L.G.A., 1933, s. 266 (2); 26 Statutes 447, and see *ante*, p. 13.

(*f*) *Ibid.*, s. 96 (1); 26 Statutes 357.

contracts, and a copy may be purchased of H.M. Stationery Office, or through any bookseller.

A person who enters into a contract with a council is not bound to inquire whether the standing orders of the council which apply to the contract have been complied with (g). If otherwise valid, any such contract has full force and effect in spite of any non-compliance with the standing orders (h). A contract made by a sub-committee when in the circumstances the particular council had no power of delegating to a sub-committee may be repudiated by the council (i).

A further safeguard is provided by the fact that until the contrary is proved, where minutes of proceedings in respect of a council or committee are made and signed, the meeting is deemed to have been duly convened and held, and the members to have been duly qualified. Further, where the proceedings are those of a committee it is deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes (k). [75]

**Contracts of Burial Authorities.**—Contracts under the Burial Acts, 1852—1906, are dealt with under BURIAL AND CREMATION. It should be noted that certain requirements relating to contracts under the Burial Act, 1852, s. 31 (l), have been repealed by the L.G.A., 1933 (m), except so far as relates to Burial Boards appointed under the Burial Acts. [76]

**Trade Union Restrictions.**—It is unlawful for any local or other public body to make it a condition of employment or continuance of employment that the person employed shall or shall not be a member of a trade union. Similarly, it is unlawful to impose any condition upon employees which may place them directly or indirectly under any disability or disadvantage as compared with other employees according to whether they are or are not members of a trade union (n). [77]

It is also unlawful for any such authority to attach any condition to a contract, or in respect of the consideration or acceptance of a tender with regard to a contract, that any person to be employed by a party to the contract shall or shall not be a member of a trade union (o). It is unlawful to apply conditions which were already in existence before the above provisions came into force (p) and any condition imposed in contravention of the provisions is void (q). [78]

**Breaking a Contract of Service.**—If an employee of a local or other public authority wilfully breaks a contract of service with the authority, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the community, such employee is liable on summary conviction to a fine not

(g) L.G.A., 1933, s. 266 (1); 26 Statutes 447; see *ante*, p. 13, with regard to compliance with standing orders.

(h) *Ibid.*

(i) *Bean (William) & Sons, Ltd. v. Flaxton R.D.C.*, [1929] 1 K. B. 450, C. A.; Digest (Supp.).

(k) L.G.A., 1933, Third Schedule, Part V., 3 (2); 26 Statutes 501.

(l) 2 Statutes 200.

(m) S. 307 and Eleventh Schedule, Part IV.; 26 Statutes 469, 522.

(n) Trade Disputes and Trade Unions Act, 1927, s. 6 (1); 19 Statutes 749.

(o) *Ibid.*, s. 6 (2).

(p) *A.-G. v. Birkenhead Corpn.* (1928), 93 J. P. 33; Digest (Supp.).

(q) Trade Disputes and Trade Unions Act, 1927, s. 6 (3); 19 Statutes 749.

exceeding ten pounds or to a term of imprisonment not exceeding three months (r). [79]

**Fair Wages Clauses, etc.**—Local authorities have been requested to introduce into contracts for work or materials fair wages clauses such as those inserted in Government contracts (s), and to observe the provisions of the Trade Boards Act, 1909 (t), prescribing minimum rates of wages in certain trades (u). [80]

**Foreign Goods. The King's Roll.**—It should also be noted that the M. of H. recommends that goods made and materials produced within the Empire should be given an effective preference, but subject to the policy that contracts should be placed in this country (a). So also the attention of local authorities has been drawn by the Ministry to the advisability of giving a preference to those firms which are on the King's Roll (b). [81]

**Liability of Individual Member of Council.**—Though a contract with a corporation is not a contract with the individual members of that corporation (c), if a member undertakes a primary liability with regard to a contract contemplated by a local authority he may himself be liable. Where, for example, the chairman of a council used the words : “ Go and do the work and I will see you paid,” it was held that there was evidence of a contract of primary liability between the contractor and the chairman though materials for the work had been ordered by the council and had been supplied before the alleged contract with the chairman (d). [82]

(r) Trade Disputes and Trade Unions Act, 1927, s. 6 (4); an addition to s. 5 of the Conspiracy and Protection of Property Act, 1875; 4 Statutes 689.

(s) See Circular Letter of the Local Government Board, September 2, 1911.

(t) 19 Statutes 692.

(u) Local Government Board Circular, July 29, 1910.

(a) M. of H. Circular 569, March 24, 1925; also 400, May 15, 1923.

(b) M. of H. Circular 686, March 31, 1926.

(c) *Re Weymouth and Channel Islands Steam Packet Co.*, [1891] 1 Ch. 66; 13 Digest 379, 1090.

(d) *Lakeman v. Mountstephen* (1874), L. R. 7 H. L. 17; 13 Digest 379, 1094.



## CONTRIBUTIONS TO COST OF WORKS AND SERVICES

|   | <b>PAGE</b> |  | <b>PAGE</b> |
|---|-------------|--|-------------|
| INTRODUCTION - - - - -  | 29          | POWER OF LOCAL AUTHORITIES TO CONTRIBUTE TO VOLUNTARY ASSOCIATIONS OR BODIES - - - - - | 35          |
| PROVISION OF HOSPITALS, ETC.  | 30          | LONDON - - - - -   | 36          |
| SEWERAGE SCHEMES - - - - -  | 30          | Out-County Authorities - - - - -   | 37          |
| CONSTRUCTION OF ARTERIAL ROADS - - - - -  | 31          | City of London and Metropolitan Borough Councils - - - - -                             | 39          |
| POWER OF LOCAL AUTHORITIES TO CONTRIBUTE TOWARDS WORKS OF OTHER LOCAL AUTHORITIES OR TO EXECUTION OF WORKS IN THEIR OWN AREAS - - - - - | 31          | Voluntary Associations - - - - -   | 40          |

*See also titles : JOINT ACTION ;  
JOINT BOARDS AND COMMITTEES.*

**Introduction.**—It would be difficult to-day even to imagine a system of local government under which the country could be divided into territorial units, each of which would be completely self-sufficient and independent of other units. Such is the community of interest between neighbouring authorities that co-operation between them is essential ; and perhaps the most important element in that co-operation is to be found in the financial arrangements which may be made between the constituent councils for the provision of the funds necessary to finance the particular work or services contemplated.

The county borough is the only type of local authority where a complete independence from neighbouring authorities could be envisaged ; and even a county borough cannot plan large-scale services, such as town planning and water supply, without due regard to the requirements of neighbouring local authorities.

Local authorities are, therefore, endowed with a multiplicity of powers to co-operate with one another in a variety of ways and to contribute to schemes in which two or more of them are jointly interested. Most of such powers are enabling only, and it is usually left to their discretion as to whether they will make any, and if so, what, contribution to the provision and maintenance of particular works.

These powers of co-operation will be dealt with in the titles cited at the head of this article, and it is only necessary to mention here that a joint board must usually be constituted by a provisional or other order (a), while a joint committee can be appointed by councils of counties, boroughs, districts and parishes under sect. 91 of the L.G.A., 1933 (b), of their own volition for any purpose in which they are jointly interested.

The proportion of the financial contribution to be made by a

(a) See, e.g., s. 279 of the P.H.A., 1875 ; 13 Statutes 742.

(b) 26 Statutes 355. On the other hand a joint committee under s. 3 of the Poor Law Act, 1930 (12 Statutes 969), must be constituted by order of the M. of H.

council to a scheme will depend, of course, on various factors, of which the degree of benefit received by the council from the scheme and the relative sizes and rateable values of the different constituent boroughs or districts are the most important. As examples of different methods of co-operation for different services, typical arrangements in respect of hospitals, sewerage and arterial roads, may be mentioned. [83]

**Provision of Hospitals, etc.**—The proportion in which the expense of providing a service such as a hospital or district asylum in which several authorities are jointly interested may be fixed either : (1) according to the extent of the accommodation required by each constituent area (for example, if a hospital contains 100 beds, 60 of which are allocated to Authority A and 40 to Authority B, the contribution of A to the cost of the provision and maintenance of the hospital or expenses might be three-fifths and of Authority B two-fifths) ; or (2) in proportion to the rateable value of the constituent districts or their population according to the last census for the time being. Sometimes this principle is varied by arranging for each constituent council to contribute to the capital expenditure on the basis of rateable value and, in addition, to pay an agreed sum per week according to the number of cases sent to the hospital from their area.

This last system is similar to that usually followed when a joint hospital board is set up by a provisional order. The overhead standing charges are apportioned among the constituent councils on the basis of rateable value and the average cost of maintaining a patient in the hospital for a day in respect of food, medical attendance, nursing and lighting and cleaning the hospital is worked out and a separate bill rendered to each constituent council covering the daily cost of maintenance, on this basis, of the patients sent by them to the hospital during the half-year. [84]

**Sewerage Schemes.**—Perhaps one of the best examples of voluntary co-operation which may be cited is that which has been adopted by many local authorities on joint schemes of sewerage and sewage disposal, inasmuch as expenses have been apportioned on the principle that the larger the area of a given district dealt with, the greater is the degree of benefit derived by the council of that district. The largest authority concerned (let us call them Z) usually take and treat the sewage from any adjoining authority, who pay Z the proceeds of a named rate in the £ upon the area from which the sewage is taken. [85]

Another principle of payment has been adopted in cases of joint sewerage agreements in which a sewer has been constructed by a small council, who cannot afford to construct sewage disposal works of their own, for the privilege of having their sewer connected to the main sewer of a larger authority and the sewage treated at that authority's sewage disposal works. The payments are made on a sliding scale, that is to say, the smaller authority agrees to pay to the larger for the first year of the period over which the M. of H. has given a sanction to the raising of the necessary loan—nil ; for the second year, a sum equal, say, to the proceeds of a rate of 3d. in the £ ; third year, a sum equal to the proceeds of a rate of 5d. in the £, and so on ; these increases following the probability that, as time goes on, a larger number of premises will be connected with the sewers ; with a provision that after the expiration of the period of five years, the smaller authority shall pay to the larger authority such annual amount as may be agreed

upon, or, in default of agreement, determined by the M. of H. or by arbitration. [86]

**Construction of Arterial Roads.**—Another example of the financial arrangements made between two local authorities A and B who are co-operating in the construction of an arterial road under sect. 285 of the P.H.A., 1875 (c), may be cited.

(1) A agrees to construct the whole of the road-works both in its district and in the district of B. (2) When the road-works are completed A and B will take over and adopt the parts of the road situate in their respective areas as highways repairable by the inhabitants at large. (3) A will finance the construction of the road and will be entitled to receive all grants paid by the M. of T. and B will pay over to A the amount of any such grants which may be received by them from the M. of T. (4) In respect of the construction of the portion of the road within its area, B will pay annually to A for a period of 20 years the produce of a rate of 2d. in the £ for each year, and after the expiration of the period of 20 years, for a further period of 40 years sums of money assessed on the following basis:—

The amount bearing the same proportion to the sum which represents the annual interest and sinking fund charges payable by A in respect of expenditure incurred in connection with securing the possession, dedication and acquisition of land required for the construction of the road as the length of so much of the road as is situate in district B bears to the total length of the road in districts A and B. [87]

**Power of Local Authorities to Contribute towards Works of other Local Authorities or to Execution of Works in their own Areas.**—There are enumerated hereunder some of the principal powers of local authorities to contribute towards works of other local authorities and to the execution of works in their own areas, and also to contribute to voluntary associations engaged on work which is of benefit to the community.

The list of powers does not pretend to be exhaustive, but some of the more important powers of contribution possessed by local authorities are described.

One of the most important sections under which contributions may be made is sect. 57 of the L.G.A., 1929 (d), allowing a county council to agree to contribute towards the expenditure incurred by the council of a borough or district, wholly or partly within the county, in the provision or maintenance of sewers or sewage disposal works, or of a supply of water or in the improvement of any existing supply of water, such sums as appear to them to be reasonable, having regard to the resources of the borough or district and the circumstances of the case. This section gives effect to the recommendation of the Royal Commission on Local Government (second report, paras. 66—67) in a somewhat extended form, and introduces a new principle into local government administration by enabling county councils to make contributions towards schemes of this kind which would otherwise be a charge upon the area for which they were provided. [88]

The general principles which have been formulated by one county council governing the consideration of applications for financial assistance, under sect. 57 of the Act of 1929, are as follows: (1) That contributions shall only be made by the county council in respect of

schemes which are approved by the M. of H. and the county M.O.H., and which provide for the needs of a sufficiently large area and for such further development as can be reasonably anticipated. (2) That contributions shall be paid annually and shall be made only in respect of capital expenditure, and shall be applied by any R.D.C. aided, in reduction of the annual loan charges falling on the parish or parishes served by the scheme. (3) That an application by a R.D.C. shall not be entertained unless the district council are prepared to levy a rate over the whole of their district for the purpose of raising and contributing an appropriate sum towards the capital expenditure on the scheme. (4) That no contribution shall be made by the county council unless the total rates on the district or parish concerned (including the amount required to cover the annual loan charges on the scheme) exceed the average rates paid by the urban or rural districts respectively in the remainder of the county area. (5) That no contribution shall be made unless the county council are satisfied that the area concerned is unable to undertake the capital expenditure involved in the proposed scheme without undue hardship to the ratepayers of the area. (6) That no contribution shall be made unless the county council are satisfied as to the reasonableness of the proposed expenditure, the terms and periods of the proposed loans, and in the case of water schemes the charges to be made by the district council to consumers of water supplied. (7) That the applicant authority shall be required to avail itself to the fullest extent of such unemployment or other grants as are obtainable in respect of such schemes. (8) That where a contribution by the county council is assessed on the estimated capital cost of a proposed scheme, the contribution shall be subject to revision on the production of the details of the actual expenditure. (9) That the county council shall not incur total annual liabilities in respect of all water and sewerage schemes greater than can be defrayed by a sum represented by a penny rate levied on the county. (10) That any or all of the foregoing principles shall be subject to modification where it can be shown to the satisfaction of the county council that there are exceptional circumstances which would justify special treatment.

**[89]**

Local authorities have numerous powers of contribution towards expenses incurred in connection with schemes under the Town and Country Planning Act, 1932.

Under sect. 28 of that Act (e), a local authority or a joint committee may contribute towards the joint expenses incurred by owners of land in, or in connection with, the proposal of a scheme which is adopted by the local authority or joint committee, or in co-operating with them under the terms of the scheme.

Sect. 29 (e) empowers county councils to incur expenditure in assisting the councils of county districts within the county and joint committees representing any such councils in connection with the preparation of schemes.

Sect. 30 (e) empowers any local authority within the meaning of the Local Loans Act, 1875 (f), to contribute towards the expenses incurred by any authority in, or in connection with, matters preliminary to the preparation of a scheme or in, or in connection with, the preparation or carrying into execution of a scheme.

Under sect. 31 (g), statutory undertakers may pay to an authority

(e) 25 Statutes 504.

(f) S. 34; 12 Statutes 253.

(g) 25 Statutes 505.

the whole or any part of any expenses incurred by that authority in connection with the preparation or carrying out of a scheme. [90]

Sect. 190 (4) of the L.G.A., 1938 (*h*), which replaces the repealed sect. 56 (1) of the L.G.A., 1929 (*i*), enables a R.D.C. to defray in whole or in part as general expenses any expenses, whether incurred before or after the commencement of the Act, which are payable as special expenses, such as the expenses of sewerage or water schemes. By this means a R.D.C. can provide necessary public services for a contributory place in their area which is not financially strong enough to provide such services without help. Under sect. 30 of the P.H.A., 1875 (*k*), a local authority may agree with a farmer for the supply to him of sewage and as to works to be made for the purpose of such supply, and may contribute to the expense of carrying into execution by such person of all or any of the purposes of such agreement. But this power is rarely used. [91]

Under sect. 34 (2) of the P.H.A., 1925 (*l*), a county council may contribute towards expenses incurred by a borough or district council within their area in connection with the prescribing of improvement lines or the compulsory purchase of land for the widening of streets made under or carried out under sect. 33 of that Act. [92]

Sect. 11 (10) of the L.G.A., 1888 (*m*), empowers a county council, if they think fit, to contribute towards the cost of the maintenance, repair, enlargement and improvement of any highway or public footpath in the county, although the same is not a county road. In the event of a rural district or part of a rural district being constituted an urban district after April 1, 1930, the unclassified roads therein, previously maintained as county roads by and at the expense of the county council, will become highways repairable by and at the expense of the urban district council. But should it be found expedient, for reasons of efficient highway administration or otherwise, to continue all or any of the unclassified roads, which were county roads when in the rural district, as county roads notwithstanding the constitution of the area as an urban district, the order making the alteration in the status of the district may contain a provision to that effect, and may further provide that contributions be paid by the U.D.C. to the county council in respect of the cost of maintenance and repair of those roads. The amount of such contributions may be settled by agreement between the councils, or in default of agreement between the councils may be determined by the M. of T. (*n*)

Under sect. 33 of the L.G.A., 1929 (*o*), county councils are empowered to make contributions in respect of the maintenance and repair of roads by U.D.C.s. [93]

Under sect. 14 (2) of the L.G.A., 1888 (*p*), a county council is empowered to contribute towards the cost of any prosecution instituted by any other county council or by any urban or rural authority under the Rivers Pollution Prevention Act, 1876. [94]

Under sect. 146 of the P.H.A., 1875 (*q*), the council of any borough or urban district may agree with any person for the making of roads within their area for the public use through the lands and at the expense of such person. With the consent of two-thirds of their number they may agree with such person to pay any portion of the expense of making

(*h*) 26 Statutes 409.

(*i*) 10 Statutes 922.

(*k*) 13 Statutes 638.

(*l*) 13 Statutes 1130.

(*m*) 10 Statutes 695.

(*n*) L.G.A., 1929, s. 31 (6); *ibid.*, 906.

(*o*) 10 Statutes 908.

(*p*) *Ibid.*, 697. (g) 13 Statutes 684.

such roads. Sect. 147 of the Act of 1875 (*r*) empowers any such council to agree with the proprietors of any canal, railway or tramway to adopt and maintain any existing or projected bridge, viaduct or arch over or under any canal, railway or tramway within their district; alternatively such authority may themselves agree to construct any such bridge, viaduct or arch at the expense of such proprietors; or, with the consent of two-thirds of the members of the council, they may agree to pay any portion of the expenses of the operations, or of the purchase of any adjoining land. By sects. 30 (2) and 31 (5) of the L.G.A., 1929 (*s*), the powers contained in these provisions of the Act of 1875 were conferred on county councils as respects county roads, but with the omission in each case of the conditions requiring a consent to be given by two-thirds of their number; see Parts I. and III. of the First Schedule to the Act of 1929 (*t*). [95]

A county council may, under sect. 22 of the Highways and Locomotives (Amendment) Act, 1878 (*u*), make such contribution as they think fit towards the cost of any bridge erected after the passing of the Act, which is certified as a proper bridge to be maintained by the county, provided that such contribution does not exceed one-half the cost of erecting the bridge. [96]

Under sect. 2 (4) of the Advertisements Regulation Act, 1925 (*a*), a county council may defray the expenses incurred by the council of an urban district of 10,000 or more inhabitants at the last census in consideration of the latter enforcing the provisions of any bye-laws made under the Advertisements Regulation Acts, 1907 and 1925. [97]

Agreements for the construction, reconstruction, enlargement, alteration or improvement, or the freeing from tolls, of any county road or other highway, or of any bridge (including the approaches) wholly or partly situate within the jurisdiction of one or more of the parties to the agreement may be made under sect. 3 of the Highways and Bridges Act, 1891 (*b*), between a county council and highway authorities and the council of any adjoining county. [98]

Under sect. 21 of the Isolation Hospitals Act, 1893 (*c*), a county council may, where they deem it expedient so to do for the benefit of the county, contribute out of the county rate a capital or annual sum towards the structural and establishment expenses of an isolation hospital founded under that Act. This power has been extended by the Isolation Hospitals Act, 1901 (*d*), to any hospital for infectious disease provided by a local authority, but the consent of the M. of H. must be obtained before an annual contribution can be paid to a hospital not founded or extended by means of a loan. Borough and district councils have also power to subscribe to voluntary hospitals under sect. 64 of the P.H.A., 1925 (*e*), and the power was extended to county councils by sect. 14 (1) of the L.G.A., 1929 (*f*). [99]

If sect. 76 of the P.H. Acts Amendment Act, 1907 (*g*), has been put in force by order in a borough or district, sub-sect. 1 (d) of that section allows the council to provide or contribute towards the expenses of a band performing in a park or pleasure ground. Under sect. 56 of the P.H.A., 1925 (*h*), a council may contribute not more

(*r*) 13 Statutes 684.

(*t*) *Ibid.*, 975, 977.

(*a*) 13 Statutes 1114.

(*c*) 13 Statutes 868.

(*e*) *Ibid.*, 1143.

(*g*) 13 Statutes 938.

(*s*) 10 Statutes 904, 906.

(*u*) 9 Statutes 175.

(*b*) 9 Statutes 192.

(*d*) S. 2; 13 Statutes 888.

(*f*) 10 Statutes 891.

(*h*) *Ibid.*, 1139.

than the product of a penny rate towards the provision of concerts and entertainments in a park or pleasure ground and towards the provision of a band authorised by sect. 76 (1) of the Act of 1907. Similarly, under sect. 69 of the P.H.A., 1925 (i), a county council, borough or district or parish council may contribute towards the expenses incurred by any other council or authority in the laying out of land to be used for cricket, football or other games. [100]

A borough council or U.D.C. may, under sect. 55 of the P.H.A., 1925 (k), contribute, if they think fit, the whole or portion of the expenses of the execution of works for the purpose of covering in water-courses and ditches and repairing and cleaning culverts authorised in Part V. of that Act. [101]

Under sect. 164 of the P.H.A., 1875 (l), as extended by sect. 45 of the P.H. Acts Amendment Act, 1890 (m), and the R.D.Cs. (Urban Powers) Order, 1931 (mm), a borough or district council may support or contribute to the support of public walks and pleasure grounds provided by any person. [102]

Sect. 15 of the Private Street Works Act, 1892 (n), empowers the local authority, if it thinks fit, to resolve to contribute the whole or a portion of the expenses of any private street works executed under that Act. R.D.Cs. may make such contributions where highway functions are delegated to them (o). A similar power to contribute where streets are made up under sect. 150 of the P.H.A., 1875, is given by sect. 81 of the P.H.A., 1925 (p). [103]

Sect. 21 of the Land Drainage Act, 1930 (q), contains provisions whereby contributions may be made by Internal Drainage Boards to the Catchment Board, or, alternatively, by the Catchment Board to Internal Drainage Boards towards expenses incurred by them respectively. [104]

Under sect. 8 (1) (k) of the L.G.A., 1894 (r), a parish council may contribute towards the expenses of doing any of the things mentioned in the section, which include the provision of recreation grounds and public walks and the cleansing of ponds and drains, or may agree or combine with any other parish council to do or contribute towards the expenses of doing any such thing. Similarly, sect. 127 of the L.G.A., 1933 (s), permits a parish council to contribute towards the expense incurred by any other parish council or person in acquiring or providing and furnishing a building suitable for use as offices, or the transaction of parish business, and for public meetings and assemblies. Power to combine with any other parish council for these purposes was also conferred by the section. [105]

Although the provisions above-mentioned and sect. 285 of the P.H.A., 1875 (t), expressly give a power to councils to combine for certain purposes, it may well be that where an enactment authorises councils of counties, boroughs, districts or parishes to execute works or take other steps, no express power is necessary to authorise two or more such councils to act in combination, especially now that sect. 91 of the L.G.A., 1933 (u), will enable them to appoint a joint committee for any purpose in which the councils are jointly interested. [106]

#### **Power of Local Authorities to Contribute to Voluntary Associations or Bodies.—Not only may a local authority contribute towards the**

(i) 18 Statutes 1146.

(k) *Ibid.*, 1138.

(l) *Ibid.*, 693.

(m) *Ibid.*, 841.

(mm) 24 Statutes 262.

(n) 9 Statutes 202.

(o) L.G.A., 1929, s. 36 (2), Proviso (b); 10 Statutes 912.

(q) 23 Statutes 543.

(r) 10 Statutes 781.

(p) 18 Statutes 1152.

(g) 23 Statutes 543.

(u) 26 Statutes 355.

(s) 26 Statutes 373.

(t) 18 Statutes 744.

(v) 26 Statutes 355.

carrying out of schemes within their own district or of schemes in which they are jointly interested with other local authorities, but they are also empowered to make financial contributions to voluntary associations and public utility societies, whose sphere of work may be complementary to those of the local authority.

Thus, under sect. 102 (1) of the L.G.A., 1929 (*v*), a scheme must be made by the M. of H. before the beginning of each fixed grant period, after consultation with the county and county borough councils concerned, providing for the payment of contributions of such amount as may be specified in the scheme to any voluntary association which provides services for the welfare of the blind or assisting or supervising defectives whilst not in institutions. At the request of the county or county borough council, the contributions payable to associations under this scheme may be deducted from the general Exchequer grant of the council and paid direct to the association by the M. of H.

By sect. 101 of the L.G.A., 1929 (*w*), a duty is imposed on county councils and county borough councils six months at least before the beginning of each grant period to prepare and submit to the M. of H. for his approval, a scheme for securing the payment by the council of annual contributions towards the expenses of voluntary associations providing maternity and child welfare services in or for the benefit of the county or county borough.

Under sect. 70 of the Housing Act, 1925 (*a*), a local authority for the purposes of Part III. of the Act (*i.e.* the council of a borough or urban or rural district) may make grants or loans to a public utility society, whose objects include the erection, improvement or management of dwelling houses for the working classes.

The Local Authorities (Publicity) Act, 1931 (*b*), empowers any borough or urban district council to contribute any sum (not being more than the product of a  $\frac{1}{2}d.$  rate per annum) towards any organisation in England and Wales approved by the M. of H. which collects or collates information with regard to the amenities and advantages of the British Isles or any part of them, whether commercial, historical, scenic, recreational, curative or climatic, and for disseminating that information outside the British Isles.

Under sect. 10 of the P.H. (Smoke Abatement) Act, 1926 (*c*), any borough council or district council may contribute towards the cost of the undertaking of investigations and researches into problems relating to atmospheric pollution and the abatement of smoke nuisances undertaken by other bodies and persons.

Reference may also be made to sect. 67 of the Poor Law Act, 1930 (*d*), which allows the council of any county or county borough, with the consent of the M. of H., to pay an annual subscription to any public hospital or infirmary, institution for blind or deaf and dumb or infirm persons, any association for providing nurses or for aiding boys and girls in service, any society for the prevention of cruelty to children, or any other institution calculated to render useful aid in the administration of the relief of the poor. [107]

## LONDON

This matter can conveniently be considered as regards London in relation to the activities which are the subject of co-operation between

(*v*) 10 Statutes 948.  
(*b*) 24 Statutes 369.

(*w*) *Ibid.*, 946.  
(*c*) 13 Statutes 1161.

(*a*) 13 Statutes 1041.  
(*d*) 12 Statutes 1001.

the L.C.C. and three groups of authorities or associations : (1) out-county authorities, (2) the City of London and the Metropolitan Borough Councils and (3) voluntary associations. [108]

#### OUT-COUNTY AUTHORITIES

**Main Drainage.**—In the first group the earliest service which calls for mention is main drainage. The greatest task of the Metropolitan Board of Works, the predecessors of the L.C.C., was to institute a complete main drainage system for London. So soon as this was completed, after many years' work and the expenditure of millions of money, the outlying authorities, faced with increasing populations and difficult problems of sewage disposal, began to consider the advantages of participating in the benefits of the London system. Hornsey was the first authority to be admitted, in 1871, and since that time a number of other authorities have been allowed to come in, the last being Barking and Ilford, until there are now eighteen out-county authorities having agreements with the L.C.C. for the reception of their drainage. The basis of contribution has been in general the same throughout, viz. (a) a capital contribution in respect of the debt redeemed prior to the date of entry, liquidated mostly by annuity payments over a term of years, and (b) annual contributions to the cost of the system from year to year, including debt charges, proportionate to the rateable value of the several districts. Special circumstances have been met by variations from the general basis. The extent to which out-county authorities are participating in the main drainage system of the L.C.C. can be gauged from the estimated contributions for 1934-35 on maintenance account which amount approximately to ten per cent. of the total estimated maintenance cost for that year. It may be mentioned that contributions have necessarily first to be made on estimates, but these are subsequently adjusted when actual costs are available. [109]

**Education** offers a fruitful field for co-operation between local education authorities. Residence being the test of liability for the cost of education the matter would appear to be simple, the one authority paying the full cost of the education of their children and students in the schools and institutions of another authority. In practice, however, many difficulties arise. It is convenient to consider the two spheres of education separately.

As regards elementary education, the Education (Institution Children) Act, 1923 (*e*), applies to London in common with other local education authorities. The L.C.C. also has agreements with various border authorities as to the admission of extra-district children to ordinary elementary schools on the same terms as are provided for in the Act of 1923, *i.e.* full average cost computed according to a formula devised by the Board of Education. These agreements do not apply to non-provided schools, as regards which a local education authority has no power to require the exclusion of children residing outside its own area. In these cases, the basis of payment turns on the individual circumstances.

It is, however, in higher education that co-operation between the L.C.C. and other authorities has assumed most importance, primarily owing to the greatly improved facilities provided by the L.C.C. for this type of instruction, and also to the large number of would-be students

from the outer districts who work in London. With a view to the regional co-ordination of higher education facilities in the Greater London area, an annual conference is held between the education directors of the various authorities, and the L.C.C. has recently concluded arrangements with most of these authorities under which students from any of the participating areas will be admitted to London technical and evening institutes on the basis, broadly speaking, of payment by the authorities of one-half of the difference between the fee normally charged to London students and the actual cost, the L.C.C. and the authorities concerned undertaking to adopt, in principle, a system of "free trade" within the ambit of the co-ordinated scheme for a definite term of years. With regard to secondary schools the basis of charge is the face cost. [109A]

**Health Services.**—The L.C.C. operates the joint scheme for London and the Home Counties relating to the Diagnosis and Treatment of Venereal Diseases (Public Health (Venereal Diseases) Regulations, 1916)(f). Contributions are made by the out-county authorities concerned on the basis of user of the facilities provided. [109B]

**Hospitals.**—The L.C.C. has co-operated in the supply of hospital accommodation in connection with two of its large housing estates, which are situated outside its own boundaries, making capital contributions and granting long leases of land at nominal rents. The power to assist in this way is contained in the Housing Act, 1925, sect. 107 (g). The L.C.C. receives substantial sums under agreements for the admission of patients (particularly infectious cases) into its numerous hospitals from out-county areas. Except in a few instances, however, the agreements provide only for user of beds when not required for London residents. Generally, the basis of recovery of cost is the actual cost of treatment. [110]

**Arterial Roads (Out-county) and Improvement Schemes.**—Mention may conveniently be made here of the large contributions made in recent years by the L.C.C. to the cost of arterial road works financed by the M. of T. in areas mostly contiguous to London in connection with the relief of unemployment. The justification for the large contributions (which were met by the L.C.C. out of maintenance account) was held to be the amount of work thus provided for London unemployed. The council has made substantial contributions to the cost of the Royal Victoria and Other Docks Approaches Improvement, which is also being financed by the M. of T. with contributions from various county authorities, in pursuance of an Act of 1929, and is also contributing to the River Lee Improvement Scheme which is being carried out by the Lee Conservancy Board and West Ham Corpn. [110A]

**Regional Planning.**—The L.C.C. contributed towards the expenses of the Greater London Regional Planning Committee set up under the Town and Country Planning Act, 1932. [110B]

**Sundry.**—The L.C.C. contributes annually under precept to the Railway Assessment Authority set up under the Railways (Valuation for Rating) Act, 1930 (h), the expenses of the authority being apportioned on the basis of the net annual value of freight-transport here-ditaments occupied by any railway company within the several counties and county boroughs. [111]

The council also pays under precept from the Lee Conservancy Catchment Board under the Land Drainage Act, 1930, a rate leviable in respect of that part of the catchment area within the County of London. [111A]

#### CITY OF LONDON AND METROPOLITAN BOROUGH COUNCILS

**Street Improvements.**—The chief service in which there is continuous co-operation between the L.C.C. and the other London local government authorities is that of street improvements. All main road improvements and others which are of sufficient importance to be regarded as "county improvements" are the concern of the L.C.C., but even with regard to these, in the majority of cases contributions are made towards the cost by the metropolitan borough councils. Similarly, in the other class of "local" improvements initiated by the metropolitan borough councils the L.C.C. generally contributes a proportion of the cost, but its contribution is usually limited to cases where the improvement is in respect of a classified road. As regards county improvements it may be added that in the actual execution of the road widening works the L.C.C. generally asks the borough council concerned to act as its agent. How the cost is to be shared in both classes of improvement is determined by the circumstances of the particular case, varying from quite a small proportion up to as much as one-half of the net cost. By net cost is meant the cost after allowing for any grant from the M. of T. out of the Road Fund. A street improvement of any importance now usually attracts such a grant, dependent, however, upon the amount of the funds at the Ministry's disposal at the time.

Street improvements in the City of London are carried out by the City Corpn., but it is the policy of the L.C.C. to contribute substantially to those adjudged to be of "county" importance, the basis being generally one-half of the net cost. See also title LONDON ROADS AND TRAFFIC. [111B]

**Health Services.**—The L.C.C. makes grants to metropolitan borough councils in respect of the dispensary treatment of tuberculosis under the P.H. (Tuberculosis) Act, 1921 (i). The grants are now block grants assessed triennially, but are designed in effect to preserve the position prior to the L.G.A., 1929, when the L.C.C. contributed one-fourth of the cost. The one-half part then contributed by the M. of H. is now included in the consolidated grant under the Act of 1929.

The L.C.C. continues to pay, under sect. 85 of the L.G.A., 1929 (k), to the City of London and metropolitan borough councils one-half of the salary of any M.O.H. or sanitary inspector appointed by these authorities, *i.e.* the grant formerly payable out of the Exchequer Contribution Account under the L.G.A., 1888 (sect. 24 (2) (c)). [111c]

**Housing.**—The losses incurred by metropolitan borough councils in carrying out schemes ranking for state assistance under the Housing, etc., Act, 1919, are wholly repayable by the L.C.C., such losses thus becoming part of the council's loss under the Act which is made good by the M. of H. to the extent of the excess of the loss over the produce of a penny rate.

The L.C.C. also contributes, at its discretion, to the rate burden of the metropolitan borough councils under the Housing Acts of 1923,

1924 and 1930, and in these cases its assistance can be expressed shortly as one-half of the rate loss, contributions being conditional on compliance with the provisions as to rents, etc., laid down in the various Acts. [112]

**Open-air Baths.**—The provision of baths in London is primarily the duty of the metropolitan borough councils, but the L.C.C. has co-operated in many instances in the provision of open-air baths in its parks and open spaces. The basis has generally been that the first cost of providing the bath is borne by the borough council concerned, and thereafter the cost of maintenance is shared equally between the council and the borough council. There are now six such open-air baths, in addition to three baths longer established of which the council has borne the whole cost. [112A]

#### VOLUNTARY ASSOCIATIONS

Examples of co-operation between the L.C.C. and voluntary associations are the following :

**Housing.**—In addition to co-operating with the metropolitan borough councils, the council has expressed its readiness to assist Public Utility Societies under the Housing Act, 1930 (l). Its assistance takes the form (conditional on compliance with the provisions of the Act) of (1) a loan, if required, for the capital cost of erection of dwellings, (2) the passing on of the state subsidy, (3) the supplement of the state subsidy by a rate contribution up to one-half of the normal rate loss estimated to occur if the council carried out all the operations. The council usually clears the site and the houses form part of the general pool of rehousing accommodation for London as a whole. Where the council has acquired the site, the council is prepared to lease it to the public utility society with an option to purchase.

The council has also assisted Public Utility Societies to provide working-class dwellings under the earlier Housing Acts. [112B]

**Maternity and Child Welfare.**—The M. of H. has made a scheme under sect. 101 (6) of the L.G.A., 1929 (m), determining, in relation to voluntary associations providing maternity and child welfare services, which services are to be treated as services in respect of which the L.C.C. is to contribute and those in respect of which the City of London and the metropolitan borough councils are to contribute, and the council makes a contribution (in excess of £30,000 a year) in accordance with the scheme. [112C]

**Welfare of the Blind.**—Similarly, under sect. 102 (1) of the L.G.A., 1929 (n), the M. of H. is required to make a scheme providing for contributions to any voluntary association which provides services for the welfare of the blind, and the council is now paying each year to various societies under the current scheme, and for certain purposes not covered by the scheme, sums approximating to £100,000. [113]

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(l) 23 Statutes 396.

(m) 10 Statutes 947.

(n) 10 Statutes 948.

## CONTROL OF ELEVATION

|                               | PAGE |  | PAGE   |
|-------------------------------|------|--|--------|
| <b>GENERAL</b> - - - - -      | 41   | <b>UNDER THE TOWN AND COUNTRY<br/>PLANNING ACT, 1932</b> | - - 42 |
| <b>BY LOCAL ACT</b> - - - - - | 41   | <b>ADVISORY COMMITTEES</b>                               | - - 43 |
|                               |      | <b>LONDON</b> - - - - -                                  | - - 44 |

*See also titles :*

ADVERTISEMENTS ;  
AMENITIES ;  
BUILDING ;  
BUILDING BYE-LAWS ;

LONDON BUILDING ;  
RESTRICTIVE COVENANTS ;  
SPECIAL TRIBUNALS ;  
TOWN AND COUNTRY PLANNING.

**General.**—Control of the height and external appearance of buildings is now recognised to be an important method of securing the amenities of a district, and has been sought by means of private Acts as well as by planning schemes under the Town and Country Planning Act, 1932 (*a*), and its predecessor the Town Planning Act, 1925 (*b*), and also by means of the education of public opinion by various societies. On the other hand, borough and district councils may, with the consent of the M. of H., relax bye-laws impeding the erection of buildings in harmony with existing buildings of artistic merit (*bb*). [114]

**By Local Acts.**—One method under local Acts, is that of allowing land to be purchased by a council in order to preserve a view. Sect. 69 of the Surrey County Council Act, 1931 (*c*), enables the county council to acquire by agreement such lands or such rights in or over land within, or in the immediate neighbourhood of the county, in order to prevent or regulate the erection of buildings which may be detrimental to the view from places of public resort.

Other sections of these Acts give power to make bye-laws as to the height and external appearance of buildings. By sect. 90 of the Surrey Act (*d*) each non-county borough or district in the county is to have an Advisory Committee of three persons, one a member of the Royal Institute of British Architects, one a fellow of the Chartered Surveyors' Institution, and a third a justice of the peace, nominated by the local authority who may pay the members reasonable fees. The local authority may then make bye-laws of the kind referred to later as in force in the Banstead urban district. When a plan of a building is deposited under the bye-laws in force, and the plan is rejected for æsthetic reasons by the borough or district council, the person depositing it may appeal to the Advisory Committee, whose decision on the appeal is final.

(*a*) 25 Statutes 472.

(*b*) 18 Statutes 1079.

(*bb*) Ancient Monuments Consolidation and Amt. Act, 1913, s. 18 ; 12 Statutes 400. Safety from fire and sanitation must be safeguarded.

(*c*) 21 & 22 Geo. 5, c. ci. See also s. 122 of the Essex County Council Act, 1933 (28 & 24 Geo. 5, c. xliv, and ss. 92, 93 and 102 of the Taunton Corpn. Act, 1931 (21 & 22 Geo. 5, c. cii.).

(*d*) Which reproduces s. 23 of the Epsom R.D.C. Act, 1930 (20 & 21 Geo. 5, c. cxv.) ; and see also s. 133 of the Essex Act.

A person may be a member of an Advisory Committee for more than one area, but a member of a borough or district council may not serve in his own area, nor a member of the Surrey county council in any area. Sometimes there is an appeal to the justices instead of to an Advisory Committee (*dd*). By sect. 133 (11) of the Essex County Council Act, 1938 (*ante*, note (*c*)), the whole section is to cease to apply to a borough or district from the date of the coming into operation of any provisions of a planning scheme in the area dealing with the design and external appearance of buildings.

As the powers under sect. 90 of the Surrey Act of 1931 are given to borough and district councils, the county council are not responsible for the making of any bye-laws. A bye-law on the subject was made by the Epsom R.D.C. under a local Act of their own (*e*), but later that rural district was converted into the Banstead urban district, and the bye-law is now in force there. Sect. 90 extends sect. 157 of the P.H.A., 1875 (*f*), to empower the council to make a bye-law making it obligatory on any one intending to construct a building, or an addition to or an alteration of a building, or a chimney exceeding 45 feet in height from the ground, to deposit a plan with the clerk or surveyor of the council. The plan must include drawings of the elevation on suitable material to a scale of not less than *one inch* to every *eight feet*, with a specification or other sufficient indication of the materials to be used in those parts of the building, or addition or alteration or chimney, comprised in the elevation. If the building is very extensive, a scale of not less than *one inch* to every *sixteen feet* may be used.

This method of securing control over the design of buildings by bye-law has not yet been authorised by the general law, but a number of councils have obtained this power by a local Act. [115]

**Under the Town and Country Planning Act, 1932.**—By sect. 11 of this Act (*g*), a scheme under the Act is to contain provisions for dealing with certain matters mentioned in the Second Schedule to the Act (*h*). Among these matters are buildings, structures and erections. By sect. 12 (1) (c) (*i*), provisions in the scheme as to these may provide for regulating, or enabling the responsible authority to regulate, the size, height, design, and external appearance of buildings. When, however, the scheme regulates the design or external appearance of a building, it must also provide that any person aggrieved may appeal either to a court of summary jurisdiction or to a tribunal to be constituted for the purpose under the scheme, and the grounds on which such an appeal may be brought are to include the ground that compliance with the decision would involve an increase in the cost of the building, which would be unreasonable having regard to the character of the locality and of the neighbouring buildings. There may be a further appeal to quarter sessions under sect. 39 of the Act (*k*) against the decision of a court of summary jurisdiction. The provisions of the scheme may differ in regard to different parts of the area, be made applicable to existing as well as new buildings, and be permanent or only pending a general development order.

No such provision in a scheme is to apply to any building occupied together with land which is mainly or exclusively used for agriculture, or

(*dd*) *E.g.* Weston-super-Mare U.D.C. Act, 1934, s. 91; 24 & 25 Geo. 5, c. xciv.

(*e*) See *ante*, p. 41, note (*d*).

(*f*) 18 Statutes 689.

(*g*) 25 Statutes 484.

(*h*) *Ibid.*, 528.

(*i*) *Ibid.*, 485.

(*k*) *Ibid.*, 510.

for the purposes of a plantation or a wood, or for the growth of saleable underwood, unless the site of the building is reserved by the scheme for any purpose, the carrying out of which in the future would necessitate the removal or the alteration of the building (sect. 11 (3)).

By sect. 19 (*l*), the scheme may provide either generally or as respects all property except such as is specified for the purpose in the scheme, that no compensation shall be payable in respect of the injurious affection of property by the coming into operation of any provision of the scheme which regulates or empowers the responsible authority to regulate the size, height, design, or external appearance of buildings. The M. of H. has issued model clauses for use in the preparation of schemes. Of these, cl. 43 deals with the height of buildings and cl. 44 with their external appearance. In cl. 43, provision is made for compliance with both a maximum height limit and with a limit based on angular measurement from the centre of the street in which the building is erected. The maximum height limit, it is suggested in a note, should not as a rule be lower than 50 feet, and in some cases should be not less than 100 feet, and the clause should not apply to an industrial building or a special industrial building in use zones. Account is to be taken of parapets, but not of chimneys, or of ornamental towers, turrets or other such architectural features, and the council may permit either or both limits to be exceeded to such extent as they think fit in the case of a place of assembly. An alternative form of clause is appended (*n*), where different height restrictions are to apply in different parts of the area and also one to meet cases where provision for governing the number of storeys in dwelling-houses is desirable (*o*).

Clause 44 of the model clauses provides that any one erecting a building in certain specified use zones should furnish drawings of not less than 1 inch to every 8 feet (or 1 inch to every 16 feet if the building is extensive) showing, in addition to the particulars necessary under the bye-laws or any local Act, other sufficient indications of the external appearance of the proposed building, including the materials to be used. Within twenty-eight days from the submission of the particulars, the council are to approve, or if they disapprove, give notice of their decision to the building owner with reasons. Such a reason would be that they consider that, having regard to the character of the locality or of the buildings erected or proposed to be erected, the building would seriously disfigure the locality by reason of its external appearance. The erection of a building before the particulars have been approved, or, if approved, its erection otherwise than in accordance with the drawings, is to be considered a contravention of the scheme and therefore it may be removed or altered under sect. 13 of the Act of 1932 (*p*). Other provisions in cl. 44 of the model clauses deal with appeal to a special tribunal, if desired, the constitution and procedure of which is set out in detail in the Fourth Schedule. See title SPECIAL TRIBUNALS. [116]

**Advisory Committees.**—It has been the policy of the M. of H. to advise consultation on these matters with voluntary societies whose object is the protection of amenities, in particular the use of panels which have been set up to give advice by a joint committee of the Council for the Preservation of Rural England and the Royal Institute of British Architects. Both in the circular on Housing issued in 1933 (*q*),

(*l*) 25 Statutes 492.

(*o*) *Ibid.*, No. 6.

(*q*) Circular 1834 (dated May 22, 1933, at pp. 4, 15) on Housing (Financial Provisions) Act, 1933 (26 Statutes 646).

(*n*) Appendix II., No. 5.

(*p*) 25 Statutes 486.

and again in the circular on Town and Country Planning issued in the same year (*r*), the Minister refers to these panels, and the use that may be made of their advice both by local authorities and private developers and builders. The prominence given to the subject both in the press and at local inquiries relating to planning schemes, shows that the public are becoming increasingly aware of the importance of control, if a reasonable standard of architectural decency is to be observed. [117]

**London.**—The construction of buildings in the administrative county of London is governed mainly by the London Building Act, 1930 (*s*), and by regulations and bye-laws under that Act. By sect. 51 (1) of that Act no building (other than a church or chapel) may be erected or subsequently increased to a greater height than 80 feet (exclusive of two storeys in the roof and of ornamental towers, turrets, or other architectural features) without the consent of the L.C.C. ; but this does not apply to the rebuilding of any building to the same height as its height on August 25, 1894, and, by sect. 51 (2), where any building which existed on August 25, 1894, and forms part of a continuous row of buildings exceeds the prescribed height, any other building in the same block belonging at that date to the owner of the first-mentioned building may be carried to a height not exceeding the height of that building. Sect. 52 of the Act contains provisions regulating the procedure to be followed where the council consent to the erection of a building of a greater height than that allowed by the Act, and provisions for appeal (*t*) where the owner of other land is aggrieved or where the application for consent has been refused. Special provisions as to the height of buildings on the side of streets laid out after August 7, 1862, and of less than 50 yards in width, are contained in sect. 53 of the Act. Subject to the exceptions mentioned therein, the height of such buildings may not be raised without the consent of the council, nor may any building be erected without the consent of the council on the side of any such street, so that its height exceeds the distance of the front external wall of such building from the opposite side of such street.

In calculating the height of a building for the purpose of the Act, "height" means the measurement taken from the level of the footway (if any) immediately in front of the centre of the face of the building, or, where there is no such footway, from the level of the ground before excavation, to the level of the top of the parapet, or where there is no parapet, to the level of the top of the external wall, or in the case of a gabled building, to the base of the gable (sect. 5).

The Act contains various exemptions from the above provisions. By sect. 54 such provisions are not to prevent the raising of any building by increasing the height of the topmost storey to such an extent as may be necessary to comply with the provisions of the Act as to habitable rooms (see sect. 75). Nor do such provisions affect powers conferred on railway companies for railway purposes (sects. 51 (3), 53 (3)). The Inns of Court are exempt from height regulations (sect. 228), as also are Crown buildings, Government buildings, police buildings, buildings vested in the Trustees of the British Museum and certain other buildings, when used for public purposes (sect. 226).

(*r*) Circular 1305 on Town and Country Planning Act, 1932, dated March 4, 1933, at p. 7.

(*s*) 23 Statutes 213.

(*t*) The appeal is to the tribunal of appeal constituted under s. 196 of the Act; 23 Statutes 313. See title SPECIAL TRIBUNALS.

By sect. 13 (5), no dwelling-house for persons of the working-class (*t*) may, without the consent of the council, be erected or re-erected within a distance of 20 feet from the centre of the roadway to a height exceeding the distance of the front external wall of such building from the opposite side of such street, but this does not apply to the re-erection of houses which were erected before August 25, 1894, by a vestry or district board under the Metropolis Management Acts or by the Commissioners of Sewers of the City of London or by the Woolwich Local Board of Health.

The Town and Country Planning Act, 1932 (*u*), applies to the administrative county of London. The local authority, for the purpose of that Act, is, as respects the City of London, the Common Council, and as respects the county of London, the L.C.C. (sect. 2 (1)). Sect. 50 of the Act contains special provisions as to the administrative county of London with the object (*inter alia*) of securing co-operation between the county council on the one hand, and the metropolitan borough councils and the Common Council on the other. See, further, the titles **LONDON BUILDING** and **TOWN AND COUNTRY PLANNING**. [118]

(*t*) A house, each floor of which is let to artisans, is outside this section (*L.C.C. v. Davis* (1897), 62 J. P. 68 ; 26 Digest 510, 2149) ; so also a lodging-house is outside the section (*L.C.C. v. Rowton House Co., Ltd.* (1897), 77 L. T. 693 ; 26 Digest 510, 2149).

(*u*) 25 Statutes 472.

## CONTROL OF EXPENDITURE

*See BUDGETARY CONTROL.*

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## CONTROLLED INDUSTRIES

*See REGULATED INDUSTRIES.*

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## CONVENIENCES, SANITARY

*See PUBLIC LAVATORIES ; SANITARY CONVENIENCES.*

# CONVEYANCING

|                                      | PAGE |                                      | PAGE |
|--------------------------------------|------|--------------------------------------|------|
| <b>INTRODUCTION</b>                  | 46   | Registration of Contract             | 53   |
| Power to take a Conveyance of        |      | Town Planning Agreements             |      |
| Land                                 | 46   | binding on the Land                  | 54   |
| Municipal Corpn.                     | 46   | <b>THE CONVEYANCE</b>                | 54   |
| County, Borough, Urban and           |      | Examination of Title                 | 54   |
| Rural District, and Parish           |      | Necessity for Conveyance             | 54   |
| Councils                             | 47   | <b>PARTS OF THE CONVEYANCE</b>       | 54   |
| The Representative Body of a         |      | Title of Parties                     | 54   |
| Rural Parish without a               |      | Recitals                             | 54   |
| Parish Council                       | 48   | Testatum                             | 54   |
| <b>THE CONTRACT FOR PURCHASE</b>     | 48   | Parcels                              | 55   |
| Making of Contract                   | 48   | Habendum                             | 55   |
| Necessity for Sealing                | 48   | Covenants                            | 55   |
| Contracts by Agents                  | 49   | <b>ACKNOWLEDGMENT OF RIGHT TO</b>    |      |
| Contracts by Committees              | 49   | <b>PRODUCTION OF DEEDS</b>           | 55   |
| <b>PARTICULARS AND CONDITIONS OF</b> |      | <b>CERTIFICATE OF VALUE UNDER</b>    |      |
| CONTRACT                             | 50   | <b>FINANCE (1909-10) ACT, 1910</b>   | 56   |
| Style of Authority                   | 50   | <b>EXECUTION</b>                     | 56   |
| Deposit                              | 50   | <b>STAMP DUTY</b>                    | 56   |
| Title                                | 50   | <b>PRODUCTION UNDER FINANCE ACT,</b> |      |
| Date for Completion                  | 51   | 1931                                 | 56   |
| Vacant Possession                    | 51   | <b>PRODUCTION UNDER FINANCE ACT,</b> |      |
| Covenants and Stipulations           | 51   | 1895                                 | 57   |
| Costs                                | 52   | <b>REGISTRATION IN COUNTY</b>        |      |
| Clause Preventing Merger of          |      | REGISTER                             | 57   |
| Contract in Conveyance               | 52   | <b>REGISTRATION IN LAND CHARGES</b>  |      |
| Clause Making Contract Conditional   |      | REGISTER                             | 57   |
| on obtaining Sanction to             |      | <b>REGISTRATION OF ASSIGNMENT OF</b> |      |
| Loan                                 | 52   | LEASE                                | 57   |
| Registered Land                      | 53   | <b>REGISTRATION WITH BOARD OF</b>    |      |
| Auction Conditions of Sale           | 53   | EDUCATION                            | 57   |
| Stamp Duty                           | 53   | <b>ENTRY IN TERRIER</b>              | 57   |

*See also titles :*

ACQUISITION OF LAND (OTHER THAN  
COMPULSORY);  
COMMITTEES;  
COMMON LAW CORPORATIONS;  
COMMON SEAL;  
COMPULSORY PURCHASE OF LAND;  
CONTRACTS;  
CORPORATE LAND;  
EASEMENTS;

LESSEE, LOCAL AUTHORITY AS;  
LOCAL LAND CHARGES;  
MORTMAIN;  
PARISH PROPERTY;  
POSITIVE COVENANTS;  
RESTRICTIVE COVENANTS;  
STAMP DUTIES;  
TOWN AND COUNTRY PLANNING.

*See also the Encyclopaedia of Forms and Precedents (2nd Ed.), Vols. 14, 15, which contain the forms relating to the sale of land and its preliminaries.*

FOR THE GENERAL LAW RELATING TO CONVEYANCING, See HALSBURY'S LAWS OF ENGLAND (2ND ED.), VOL. 7, TITLE "CONTRACT," VOL. 10, TITLE "DEEDS AND OTHER INSTRUMENTS," AND ALSO THE TITLES "LANDLORD AND TENANT," "MISTAKE," "MORTGAGE," "REAL PROPERTY AND CHATTELS REAL," "RENT CHARGES AND ANNUITIES," "SALE OF LAND," AND "SPECIFIC PERFORMANCE," IN SUBSEQUENT VOLUMES.

## INTRODUCTION

**Power to take a Conveyance of Land.** *Municipal Corpns.*—The powers of a borough council to acquire land, acting as it does for the municipal corpns., are somewhat wider than those possessed by county councils, urban and rural district councils, parish councils and parish meetings.

A municipal corp. is the body corporate, constituted by the incor-

poration of the inhabitants of the borough (a). It is created by the grant of a Charter from H.M. the King, and acts by the borough council. It is a common law corp<sup>n</sup>. and in that capacity has all the rights of a private person. So far, therefore, it has a right at common law to acquire land, but this right has been limited by statute in both ancient and modern times to such an extent that the power is of little, if any, practical importance: for example, all the revenues of a borough council must be paid into the general rate fund (b), and it cannot apply its funds to any objects other than those authorised by statute, although it has a power of disposal over the surplus of the rate fund (if any) (c).

In addition to this common law power, a municipal corp<sup>n</sup>. may have specific power to acquire and hold land conferred by the Charter of Incorporation. In any case where it has no such power under its Charter, or where any such power is exhausted, the borough council may, with the approval of the Minister of Health, acquire land by agreement as corporate land (*i.e.* land belonging to or held in trust for a municipal corp<sup>n</sup>. otherwise than for an express statutory purpose) in such manner and on such terms and conditions as the Minister may approve (cc). [119]

*County, Borough, Urban and Rural District and Parish Councils.*—Local authorities as defined in sect. 305 of the L.G.A., 1933 (d), that is to say, county councils, county and non-county borough councils, urban and rural district councils and parish councils, have certain specific powers to acquire and hold land conferred by statute. They may acquire by agreement, whether by way of purchase, lease or exchange, land situate within or without their area, for the purpose of their functions under any public general Act (e). The functions of a county council include such functions as are exercised through the standing joint committee of the court of quarter sessions and the county council (f). Any of such local authorities may, with the consent of and subject to any conditions imposed by the appropriate Minister (the Minister of Health, Board, Commissioners or other department concerned with the purpose for which the land is acquired), similarly acquire by agreement any land for any purpose for which they are authorised by any public general Act to acquire land, notwithstanding that it is not immediately required for the purpose. Any land so acquired may, until it is required for the purpose for which it was acquired, be held and used for the purpose of any of their functions (g). This provision would not enable the local authority to purchase land for the express purpose of reselling it (other than land which is surplus to their actual requirements) nor would it authorise the local authority to act contrary to any covenants, restrictions or stipulations affecting the land (h).

As all the local authorities referred to are bodies corporate, they cannot, in general, hold land without a licence in mortmain from the Crown (i). Each of them has, however, statutory power to hold land for the purposes of its constitution without licence in mortmain (k). [120]

(a) L.G.A., 1933, s. 305; 26 Statutes 466. (b) *Ibid.*, s. 185; *ibid.*, 407.

(c) Even this power is to be somewhat narrowly interpreted, see *R. v. Sheffield Corp<sup>n</sup>.* (1871), L. R. 6 Q. B. 652; 33 Digest 86, 554; and *Newcastle-upon-Tyne Corp<sup>n</sup>. v. A.-G.*, [1892] A. C. 568; 33 Digest 85, 550.

(cc) L.G.A., 1933, ss. 171, 305; *ibid.*, 400, 466. (d) 26 Statutes 466.

(e) L.G.A., 1933, ss. 157, 167; 26 Statutes 391, 398.

(f) *Ibid.*, s. 157 (2). (g) *Ibid.*, s. 158. (h) *Ibid.*, s. 179.

(i) Mortmain and Charitable Uses Acts, 1888, 1891, 1892; 2 Statutes 385, 396, 398.

(k) L.G.A., 1933, ss. 2 (2), 17 (3), 31 (2), 32 (2), 48 (2); 26 Statutes 307, 313,

*The Representative Body of a Rural Parish without a Parish Council.*

—In the case of a rural parish not having a separate parish council, the chairman of the parish meeting and the councillor or councillors representing the parish on the R.D.C., form a body corporate by the name of “the representative body” of the parish, and this representative body has power to hold land for the purposes of the parish without licence in mortmain (*l*). [120A]

## THE CONTRACT FOR PURCHASE

(For forms, see Encyclopædia of Forms (2nd ed.), Vol. 14, pp. 239 *et seq.* and pp. 481 *et seq.*)

There are certain points specially affecting the contract by a local authority to acquire land, which must be observed.

**Making of Contract. Necessity for Sealing.**—All contracts entered into by a local authority or by one of its committees must be made in accordance with its standing orders, but a person entering into such a contract is not bound to inquire whether the standing orders have been complied with, and all contracts entered into by the authority, if otherwise valid, are of full force and effect, notwithstanding that the standing orders have not been complied with (*m*).

In order that the contract may be enforced in the courts, it must be evidenced in writing, and contain the names and descriptions of the parties, an identifiable description of the property, the amount of the consideration and any special stipulations subject to which the purchase is to be effected. It must be signed by the party to be charged with its enforcement or his duly appointed agent (*n*) and, as the local authority is a corporate body, it should, in the ordinary course, if contracts are to be exchanged, be sealed with the common seal, in accordance with the provisions of the standing orders. A parish council or a parish meeting has no common seal. Where an instrument under seal is required, the parish council may act under the hands and seals of two members, who should be duly appointed by resolution. The parish meeting of a rural parish with no parish council may act under the hands and seals of the members of their representative body. Any instrument purporting to be so executed by the members of the parish council or by the representative body is, until the contrary is proved, deemed to have been so executed (*o*).

The only exceptions to the rule as to sealing contracts are matters of urgent necessity, or trivial matters of daily occurrence, or matters within the trading purposes of the authority (*oo*) (so far as they have special statutory power to trade, as in the case of an authority supplying electricity), the subject of the contract being a matter essential to such trading, or a contract relating to a matter incidental to the purposes of the authority, the consideration for which has been executed by the other party. These exceptions will not, as a rule, affect the purchase of land (see title CONTRACTS). [121]

(*l*) L.G.A., 1933, s. 47 (3); *ibid.*, 329. (*m*) *Ibid.*, s. 266; *ibid.*, 447.

(*n*) Law of Property Act, 1925, s. 40; 15 Statutes 216.

(*o*) L.G.A., 1933, ss. 47 (4), 48 (3); 26 Statutes 329.

(*oo*) It should be noted that there is a conflict of authority as to whether a local authority has the advantage of this exception, which applies primarily to trading bodies only. Cf. *Wells v. Kingston-upon-Hull Corpn.* (1875), L. R. 10 C. P. 402, and *Bourne and Hollingsworth v. St. Marylebone B.C.* (1908), 72 J. P. 129, 306 (the decision was reversed on other grounds); 18 Digest 388, 1150, and 389, 1156.

*Contracts by Agents.*—The local authority may, however, act through an agent, and always does so if the sale is effected by public auction, or if it is desired not to disclose for the time being that the authority is the actual purchaser, but the agent should be appointed by a document under the common seal (*p*). If this is not done or if the authority of the agent is exceeded, it will be sufficient for the authority afterwards to ratify the contract of its agent at any time while it is still enforceable. The ratification should be under seal where the contract of the agent, if made by the authority, would require to be sealed (*q*), but a resolution of ratification, duly passed by the authority and entered on the minutes of its proceedings is in practice frequently regarded as sufficient.

The absence of a sealed contract between the authority and its agent would not, however, justify the agent in repudiating his agency, and if the property has been conveyed to him and he refuses to convey it to the authority, he would then hold such property as trustee for the authority (*r*).

Negotiations by a local authority with a view to entering into a contract for the purchase of land are invariably carried out in the preliminary stages by a committee of the authority, and frequently by the chairman of such a committee or the town clerk or other officer. In such cases, if he is desired to take executive action on the contract, the chairman or officer should be appointed as agent of the authority under seal. [122]

*Contracts by Committees.*—A local authority has power to appoint a committee for such general or special purposes as in its opinion would be better regulated and managed by a committee, and it may delegate to such committee, with or without restrictions or conditions, any functions exercisable by the authority except the power of levying or issuing a precept for a rate or of borrowing money (*s*). A committee will not, however, be able to bind the authority by a contract to purchase land unless it has general or specific power delegated by the authority to do so and to affix the common seal to the contract.

In cases where the purchase of land is being carried out by a committee under specific statutory powers, reference must be made to the appropriate statute to ascertain whether such powers are sufficient. In cases where the committee's powers must be covered by delegation from the authority, reference should be made to the resolution of the authority conferring the powers on the committee or to the standing orders, which frequently delegate such powers (*t*).

Even though the terms of delegation to a committee should include the purchase of land, the contract should be referred to the authority as a whole, if the purchase money is to be raised by loan, as the autho-

(*p*) On the appointment of agents, see Halsbury (2nd ed.), Vol. 8, p. 99.

(*q*) *Kidderminster Corpn. v. Hardwick* (1873), L. R. 9 Exch. 13; 13 Digest 390, 1163; *Brooks, Jenkins & Co. v. Torquay Corpns.*, [1902] 1 K. B. 601; 13 Digest 390, 1165.

(*r*) *Longfield Parish Council v. Robson* (1913), 29 T. L. R. 357; 43 Digest 705, 1441.

(*s*) L.G.A., 1933, s. 85 (1); 26 Statutes 352. The former general restrictions on the power of a committee to enter into a contract contained in Municipal Corporns. Act, 1882, s. 22; P.H.A., 1875, s. 200; L.G.A., 1894, ss. 56, 57, were repealed by L.G.A., 1933, s. 307, Eleventh Schedule.

(*t*) E.g. Education Act, 1921, s. 4 (2); 7 Statutes 132; Housing Act, 1925, s. 111 (1); 13 Statutes 1063; Poor Law Act, 1930, s. 4 (3); 12 Statutes 971; Allotments Act, 1922, s. 14 (1); 1 Statutes 312.

rity has no general power to delegate to a committee its power to borrow money (u). [123]

#### PARTICULARS AND CONDITIONS OF CONTRACT

**Style of Authority.**—The name of the local authority, to be inserted in the contract, if made direct with them as purchasers, will be as follows:—

- County Council—The County Council of ..... or The County Council of the Administrative County of ..... (v)
- Council of a Borough being a City, with a Lord Mayor—The Lord Mayor, Aldermen and Citizens of the City of ..... (w)
- Any other Borough, being a City—The Mayor, Aldermen and Citizens of the City of ..... (w)
- Any Metropolitan Borough—The Mayor, Aldermen and Councillors of the Metropolitan Borough of ..... (x)
- Any other Borough—The Mayor, Aldermen and Burgesses of the Borough of ..... (w)
- Urban District Council—The Urban District Council of ..... in the County of ..... (y)
- Rural District Council—The Rural District Council of ..... in the County of ..... (a)
- Parish Council—The Parish Council of the Parish of ..... (b)
- Parish Meeting of a Rural Parish not having a Parish Council—The Representative Body for the Rural Parish of ..... (c) [124]

**Deposit.**—In cases where the purchase of the land will make it necessary for the local authority to obtain the sanction of the Minister of Health to the borrowing of the purchase money (and, in the case of a parish council, also the consent of the county council) (d), it is not usual for the authority to pay a deposit, as the whole of the consideration should be defrayed out of the loan. [125]

**Title.**—Unless the contract otherwise stipulates, the local authority, like any other purchaser, is entitled on the purchase of freehold land to a thirty years' title (e). Upon the assignment of a leasehold interest in land the authority is entitled (unless the contract otherwise stipulates) to a title commencing with the lease and followed by an abstract of all dealings therewith during the thirty years (at least) preceding the date of the contract (e). A local authority desirous of purchasing land for a purpose which will definitely preclude it from reselling (such as the widening of a highway) need not object to technical defects in the title which do not endanger its own possession since, unlike a private owner, in this case it has not to consider difficulties of re-selling.

Prior to accepting the stipulated title, it is advisable to inquire of the vendor whether there are any burdens or easements (such as tithe, tithe rentcharge, land tax, rights of way or light, etc.), which are binding on the land, even though not disclosed. Before completion search should also be made in the local land charges register for any charges or restrictions, e.g.—sums due to the local authority for private street and other works, resolutions as to making of town planning schemes and provisions of such schemes (f). [126]

(u) L.G.A., 1933, s. 85; 26 Statutes 352. (v) *Ibid.*, s. 2 (2). The practice varies.

(w) *Ibid.*, s. 17 (1).

(x) London Government Act, 1899 (11 Statutes 1225), and orders; 15 Statutes 221.

(y) L.G.A., 1933, s. 31 (2). (a) *Ibid.*, s. 32 (2). (b) *Ibid.*, s. 48 (2).

(c) *Ibid.*, s. 47 (3). (d) *Ibid.*, s. 195.

(e) Law of Property Act, 1925, s. 44 (1); 15 Statutes 221.

(f) See effect of *Re Forsey and Hollobone's Contract*, [1927] 2 Ch. 379 (40 Digest 82, 634), and *Re Middleton and Young's Contract*, [1929] W. N. 70 Digest (Supp.).

**Date for Completion.**—The date for completion should be fixed at such a time as will enable the authority without inconvenience to provide the purchase money, having regard to the normal procedure for obtaining the sanction of the Minister of Health to the loan, and arranging for borrowing the money required. It is often customary to make the contract conditional upon the sanctions being obtained, where sanctions are necessary, and to fix the date a month or six weeks after the last of any consents have been obtained. A local authority may, however, without the consent of any sanctioning authority, borrow by way of temporary loan or overdraft from a bank or otherwise, any sums required for the purpose of defraying, pending the raising of a loan which it has been authorised to raise, expenses intended to be defrayed by means of a loan (g). A local authority under the P.H.A. may also borrow moneys without the sanction of the Minister for purposes for which such moneys may be borrowed under those Acts, upon mortgage of any lands, works or other property they possess for the purpose of disposal of sewage pursuant to the Acts such as a sewage farm (h).

Consideration should also be given to the date by which a contribution towards the purchase price by some other authority (such as a county council assisting a district council in the purchase of land for a recreation ground or park) (i) will be received. [127]

**Vacant Possession.**—The contract should provide for vacant possession to be given to the authority on completion, unless the authority does not desire immediate possession. [128]

**Covenants and Stipulations.**—Care should be taken upon receipt of the draft contract to note any points which will specially affect the local authority as purchaser, such as covenants or stipulations to which the land is subject. Whether the covenants are positive or negative, they should be within the powers of the authority. A corpn., such as a local authority, which is entrusted by the legislature with certain powers and duties, expressly or impliedly for public purposes, cannot divest itself of those powers and duties. It cannot enter into any contract or take any action incompatible with the due exercise of its powers or the discharge of its duties. Where, however, a corpn. purchases land by agreement for a purpose authorised by its statutory powers, there is nothing to prevent it from entering into covenants restricting the use which it might make of the land under other powers also given to it for the benefit of the public, provided that such restrictions do not prevent the user of the land for the particular purpose for which it was acquired (j).

In general, a local authority has no power to appropriate land it has acquired for any purpose other than that for which it was acquired. If, however, the land is not required for that purpose, it may be appropriated for some other purpose approved by the Minister of Health, for which it has authority to acquire land. It may not, however, on any land so appropriated, create or permit any nuisance, sink any well for the public supply of water, construct a cemetery, burial ground, destructor, sewage farm or hospital for infectious diseases, unless after

(g) L.G.A., 1933, s. 215 (1); 26 Statutes 422.

(h) P.H.A., 1875, s. 235; 13 Statutes 724.

(i) E.g. P.H.A. 1925, s. 69 (2); *ibid.*, 1147.

(j) *Stourcliffe Estates Co., Ltd. v. Bournemouth Corpn.*, [1910] 2 Ch. 12; 18 Digest 366, 991.

local inquiry and consideration of any objections made by persons affected, the Minister authorises such work or construction, subject to such conditions as he thinks fit (*k*). While an appropriation of land does not free it from any covenant or restriction already affecting its use by the council, sub-sect. (2) of the same section (*k*) allows compensation for a breach to be assessed in certain cases (see Vol. I, p. 354).

Certain local authorities have power under local Acts to hold and use, for specific and defined purposes, land acquired or taken on lease and buildings erected thereon, notwithstanding any covenant, condition, restriction or stipulation inconsistent with such holding or use contained in any deed to which the authority is not a party and made before a specific date, subject to a proviso against the authority or their servants or agents permitting, causing or suffering any nuisance to the owners or occupiers of adjoining lands or premises (*l*).

A restrictive covenant on the user of land or buildings of freehold tenure or with the exception of mining leases subject to a lease created for seventy years of which at least fifty years have expired, may also be totally or partially discharged or modified by order of an official arbitrator, upon the application of any person interested in the land, on the ground that changes in the character of the neighbourhood have rendered the restriction obsolete or that the persons of full age and capacity entitled to the benefit of the restriction have expressly or impliedly agreed to the covenant being discharged or modified, or that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction (*m*). [129]

**Costs.**—It is advisable to include in the contract a provision that each party shall pay its own costs, as otherwise (apart from a special enactment) the local authority will be liable for the vendor's costs (*n*). [130]

**Clause Preventing Merger of Contract in Conveyance.**—The provisions of the contract normally merge in the conveyance when it is executed. If the contract contains any provisions which will not be incorporated in the conveyance and which it is desired shall continue to operate, it is advisable to insert a clause that notwithstanding the completion of the assurance of the land to the authority, the contract shall remain in force with regard to anything remaining to be done or performed thereunder and not provided for in the conveyance. [131]

**Clause Making Contract Conditional on obtaining Sanction to Loan.**—In cases where the consent of the Minister of Health or other Government department is required to the acquisition of the land, or where the purchase will involve the borrowing of money, and thus require the sanction of the Minister of Health or other sanctioning authority, the contract should provide for its rescission if such consent is refused or is not obtained within a definite time, subject to the local authority using its best efforts to secure the sanction. The Minister of Health invariably requires a valuation from the district valuer of the Board of Inland Revenue before granting sanction to a loan for the purchase of land. [132]

(*k*) L.G.A., 1933, s. 163 (1); 26 Statutes 396.

(*l*) E.g. West Ham Corp. Act, 1931, s. 22; 21 & 22 Geo. 5, c. lx.

(*m*) Law of Property Act, 1925, s. 84; 15 Statutes 260.

(*n*) L.G.A., 1933, s. 176 (26 Statutes 403) incorporating (with certain exceptions) the provisions of the Lands Clauses Acts as to purchases by agreement.

**Registered Land.**—Contracts for the sale of registered land (*o*) generally follow the ordinary rules, but the following points should be noted. The abstract of title should be a copy of the entries on the register relating to the property sold together with the usual evidence in relation to the overriding interests, which include rights of any person in occupation of the land, save where enquiry is made of such person, and the rights are not disclosed, rights under the local Land Charges Register, and, in the case of possessory, qualified or good leasehold titles, all estates, rights, interests and powers excepted from the effect of registration (*oo*). It should be accompanied by an authority to inspect the register. The vendor must, subject to any stipulation to the contrary, furnish the purchaser, at his own expense, with such copies, abstracts and evidence relating to any subsisting rights and interests appurtenant to the registered land as to which the register is not conclusive, and of any matters excepted from the effect of registration, as the purchaser would have been entitled to in the case of unregistered land (*p*). In the absence of a stipulation to the contrary, the purchaser must bear the expense of copies and abstracts where the purchase money does not exceed £1,000, and a clause to cover this eventuality should therefore be inserted in the appropriate case (*q*). [133]

**Auction Conditions of Sale.**—Particular attention should be paid in case of a purchase at a public auction to the printed conditions of sale usually attached to the particulars of sale, as they often include arbitrary conditions relating to the length of the earlier title, date for completion, covenants and stipulations as to the user of the property. [134]

**Stamp Duty.**—A contract under hand for the sale of land above the value of £5 requires to be stamped with a 6d. stamp. An adhesive stamp affixed to the contract and cancelled by the first person executing it is sufficient (*r*). If this is not done, the contract will, as an act of grace on the part of the stamping authorities, be stamped by impressed stamp at any time within fourteen days of the date of signing the document; otherwise it can only be stamped on payment of the penalties prescribed by the Stamp Act, 1891. A contract under seal must be stamped with an impressed 10s. stamp at any time within thirty days of execution (*s*). If there is a counterpart of such a contract, even though it is under hand, it will require to be stamped with an impressed 5s. stamp and denoted. [135]

**Registration of Contract.**—The contract may be registered at the Land Registry as a Land Charge (Class C, IV.) (*t*). If it is not so registered, it will be void as against a purchaser of the legal estate in the land for valuable consideration, even though he has notice of it (*u*). It is not, however, usual to register an ordinary contract of purchase, unless the actual conveyance is not to be completed for some considerable time, or unless it consists in a right of pre-emption which it is not contemplated will be exercised at an early and definite date, or

(*o*) Land Registration Act, 1925, s. 70 (1); 15 Statutes 477.

(*oo*) It should be noted that under sect. 11 of the Small Holdings and Allotments Act, 1926 (1 Statutes 322), land purchased by a county council for small holding purposes must be made registered land.

(*p*) Land Registration Act, 1925, ss. 70, 110.

(*q*) *Ibid.*, s. 110.

(*r*) Stamp Act, 1891, ss. 8, 22; 16 Statutes 620, 625.

(*s*) *Ibid.*, s. 15.

(*t*) Land Charges Act, 1925, s. 10; 15 Statutes 531.

(*u*) *Ibid.*, s. 18 (2).

circumstances exist which suggest that the vendor or his successors in title may endeavour to evade carrying out the contract. [136]

**Town Planning Agreements binding on the Land.**—The council of a county, borough, urban or rural district may enter into an agreement with any owner who is willing to allow his land to be subject, either permanently or for a specified time, to conditions restricting the planning, development or use thereof in any manner in which such matters might be dealt with by a town planning scheme, and may enforce such agreement against successive owners as though the council were the owner of adjacent land and the agreement had been entered into for the benefit of such adjacent land (a). This provision has proved very useful to authorities whose town planning schemes have not reached the stage of final approval, but whose districts are in course of development.

[137]

#### THE CONVEYANCE

**Examination of Title.**—After the investigation of title (b), examination of deeds and searches in accordance with the usual practice, the draft conveyance will be prepared on behalf of the local authority, as purchasers (c). [138]

**Necessity for Conveyance.**—Although the authority might be satisfied with merely taking possession of the land, without any formal conveyance, the vendor is entitled to insist upon such a conveyance being taken (d). [139]

#### PARTS OF THE CONVEYANCE

**Title of Parties.**—The name of the local authority, to be inserted in the conveyance as purchasers, is that already set out for inclusion in the contract (dd). [140]

**Recitals.**—In the recitals, it may be convenient, although not strictly necessary, to set out the statute under which the land is purchased, and the purpose for which it is purchased, to show that it comes within the ambit of the authority's powers, and is not subject to the provisions as to mortmain (e). In cases where the consent of the Minister of Health or other Government department is required to the purchase (not sanction to the borrowing of the purchase money) and has been obtained, this fact should be recited. The recitals should be made as wide as possible, bearing in mind the power of appropriation (already referred to) subject to any covenants, restrictions and stipulations on the title. It is sometimes advisable that the contract should also be recited (see *ante*, p. 52). [141]

**Testatum.**—Then will follow the operative part, conveying the land to the authority, including a statement as to the consideration, and the receipt for such consideration. The district or other auditor will require to note this receipt, as no other receipt from the vendor can be required (f).

The vendor should, if possible, convey as beneficial owner, where valuable consideration passes, thus giving the authority the benefit of the implied covenants that the vendor has full power to convey,

(a) Town and Country Planning Act, 1932, s. 34; 25 Statutes 506.

(b) See as to abstract of title and requisitions on title, Ency. Forms (2nd ed.), Vol. 14, pp. 506 *et seq.* (c) For forms, see Ency. Forms (2nd ed.), 15 *passim*.

(d) *Re Cary-Eakes' Contract*, [1906] 2 Ch. 143; 17 Digest 232, 470.

(dd) P. 50, *ante*.

(e) See *ante*, pp. 47, 48.

(f) Law of Property Act, 1925, s. 68; 15 Statutes 245.

guaranteeing the purchaser quiet possession of the property, and that it is free from incumbrances and that, if necessity arises, he will further assure (g). If the vendor is a trustee, mortgagee, the personal representative of a deceased person, the committee of a lunatic or receiver of a defective, or if he conveys by order of the court, whether for value or not, the implied covenants are limited to a covenant that he has done nothing to encumber the property (h). A tenant for life usually conveys as a trustee, and in this way gives only a limited covenant. In the case of leasehold property, an assignment by the vendor as beneficial owner for valuable consideration carries in addition an implied covenant that the lease is a valid and subsisting one, that the rent has been paid and the covenants and conditions have been performed (i). [142]

**Parcels.**—The parcels should follow the description of the property in the contract, where this is obviously sufficient. The purchasing authority is entitled generally to say by what description the land shall be vested in it, but the vendor may require the description to be such as to give effect to the true contract (j).

The parcels will be subject to any exceptions and reservations provided for in the contract and expressly set out in the conveyance. [143]

**Habendum.**—The habendum, defining the interest in the property to be taken by the purchasing authority, usually conveys such property to the local authority "and their successors in fee simple," but these words are not strictly necessary (k). [144]

**Covenants.**—The express covenants to be entered into by the vendor and the purchasing authority will follow the terms of the contract. It should be noted that covenants that can be made to run with the land either at law or in equity are of a restricted class (l).

Where the authority take an assignment of a leasehold interest from the lessor, or from an assignee who has covenanted to indemnify his assignor, there is an implied covenant on the part of the purchaser to pay the rent and perform the covenants of the lease and to indemnify the vendor. This implied covenant may be varied by the deed of assignment (m). [145]

#### ACKNOWLEDGMENT OF RIGHT TO PRODUCTION OF DEEDS

The conveyance should also contain an acknowledgment by the vendor of the right of the purchasing authority to call for the production of the title deeds retained by the vendor, where he retains any part of the land to which the documents relate, or where a document consists of a trust instrument or other instrument creating a trust, which is still subsisting, or an instrument relating to the appointment of or discharge of a trustee from a subsisting trust (n).

In practice, trustees, personal representatives and mortgagees who retain title deeds do not give an undertaking for safe custody, nor can the purchasing authority require it unless provision therefor is made in the contract.

(g) Law of Property Act, 1925, s. 76 (1), Part I. of Second Schedule; 15 Statutes 250, 412.  
(h) *Ibid.*, Part VI. of Second Schedule.

(i) *Ibid.*, Part II. of Second Schedule.

(j) *Monighetti v. Wandsworth Borough Council* (1908), 73 J. P. 91; 40 Digest 277, 2414.  
(k) Law of Property Act, 1925, s. 60; 15 Statutes 237.

(l) It sometimes occurs that covenants which do not run with the land are inserted with a view to enforcement at a future date, resulting in the loss of the object of the covenant owing to the land changing hands before an attempt at enforcement is made.

(m) *Ibid.*, s. 77 (1) (c), (d), Parts IX. and X. of Second Schedule.

(n) *Ibid.*, s. 45 (9).

The acknowledgment and undertaking will bind the documents while they are in the custody of the vendor or of any subsequent holder (o). [146]

#### CERTIFICATE OF VALUE UNDER FINANCE (1909-10) ACT, 1910

If the amount or value of the consideration does not exceed £500 a certificate should be inserted in the conveyance that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £500, in order that the stamp duty may be reduced to 10s. per cent. instead of the normal amount of £1 per cent. (p). [147]

#### EXECUTION

Where the conveyance requires to be executed by the authority (as where there is any express covenant on its part) the common seal should be affixed in accordance with the standing orders (q).

If the vendor is a corporate body, it should be noted that in favour of a purchaser a deed is deemed to have been duly executed by a corp'n. aggregate if its seal is affixed in the presence of and attested by its clerk, secretary or other permanent officer or his deputy and a member of the board of directors, council or other governing body of the corp'n., and where a seal purporting to be the seal of a corp'n. has been affixed to a deed, attested by persons purporting to be persons holding such offices, the deed is deemed, until the contrary is proved, to have been executed in accordance with such requirements and to have taken effect accordingly (r). [148]

#### STAMP DUTY

The conveyance must be stamped with an *ad valorem* stamp at the rate of £1 per cent. (subject in cases where the amount or value of the consideration does not exceed £500 to the reduction referred to above) (s), within thirty days of execution (t). If the value of the consideration is not *prima facie* apparent, as in the case of land conveyed to the authority for widening a highway in consideration of the authority making up and maintaining such land as part of the public highway, or land conveyed by way of gift, the amount of the stamp duty will require to be adjudicated by the Commissioners of Inland Revenue. The amount of the stamp duty will not be reduced by the authority taking a conveyance restricting their use of the land and thus (as in the case of land to be used solely as a recreation ground) reducing its market value, but any such restriction already existing on the land at the time of its purchase and contained in the prior title deeds will reduce the *ad valorem* duty accordingly. [149]

#### PRODUCTION UNDER FINANCE ACT, 1931

Every conveyance on sale or lease for a term of seven years or more or transfer on sale of such a lease must be produced to the Commissioners of Inland Revenue within thirty days of execution, together with a statement (Form LV. (a)) (tt) of certain particulars with regard to

(o) Law of Property Act, 1925, s. 64 (2); 15 Statutes 241.

(p) Finance (1909-10) Act, 1910, s. 73; 16 Statutes 754. (q) *Ante*, p. 48.

(r) Law of Property Act, 1925, s. 74 (1); 15 Statutes 248.

(s) See under "Certificate of Value under Finance (1909-10) Act, 1910," on this page. (t) Stamp Act, 1891, s. 15; 16 Statutes 623.

(tt) As an alternative to Form LV. (a), Form LV. (b) may be sent, with a copy of the deed attached. The latter form is often more easy to fill up.

the instrument, or with a copy of the instrument, or with such information as to the transfer or lease as the commissioners may within six months after production require. The instrument so produced is stamped with a denoting stamp, and, without such stamp, no instrument of which production is required will be deemed to be duly stamped for the purposes of the Stamp Act, 1891, sect. 14 (*u*). [150]

#### PRODUCTION UNDER FINANCE ACT, 1895

Every conveyance on sale made under statutory authority must also be produced to the Commissioners of Inland Revenue, properly stamped, within three months of the completion of the purchase under penalty, in case of default, of payment to the Crown of the stamp duty together with interest at 5 per cent. per annum from the completion of the purchase to the date of production (*a*). [151]

#### REGISTRATION IN COUNTY REGISTER

If the land is in the county of Middlesex or Yorkshire, conveyances and leases exceeding 21 years should be registered in the appropriate county registry, as otherwise the title of the purchasing authority is liable to be displaced by prior registration of a subsequent conveyance or mortgage (*b*). [152]

#### REGISTRATION IN LAND CHARGES REGISTER

Where a conveyance contains a covenant restrictive of the user of the land, registration in the Land Charges Register is necessary (*bb*). Similarly a lease containing an option to purchase or an option to take a further lease will require to be protected in the same way (*c*). [152A]

#### REGISTRATION OF ASSIGNMENT OF LEASE

The terms of a lease will probably require the registration of an assignment of the lease with the lessor. [153]

#### REGISTRATION WITH BOARD OF EDUCATION

If the conveyance is of land acquired for educational purposes, it must be sent to the Board of Education to be recorded in the books of the Board as soon as may be after execution (*cc*). [154]

#### ENTRY IN TERRIER

The conveyance or assignment should also be entered in the Terrier of the authority's properties. [155]

(*u*) Finance Act, 1931, s. 28; 24 Statutes 226.

(*a*) Finance Act, 1895, s. 12; 16 Statutes 690. Note this production is required in addition to any under the Finance Act, 1931.

(*b*) Middlesex Registry Act, 1708; Land Registry (Middlesex Deeds) Act, 1891; Law of Property Act, 1925, ss. 11, 197; Land Charges Act, 1925, ss. 10, 18. Yorkshire Registers Act, 1884, and amending Acts of 1884 and 1885; 15 Statutes 67, 164, 191, 376, 531, 542; 142, 162.

(*bb*) Land Charges Act, 1925, s. 10 (1) (D) (ii.); 15 Statutes 635.

(*c*) *Ibid.*, s. 10 (1) (c) (iv.). (*cc*) Education Act, 1921, s. 117 (2); 7 Statutes 193.

## CO-OPERATION BETWEEN LOCAL AUTHORITIES

*See JOINT ACTION.*

# COPYRIGHT AS AFFECTING LOCAL AUTHORITIES

|  | <small>PAGE</small> |  | <small>PAGE</small> |
|--|---------------------|--|---------------------|
| DEFINITION - - - - -                         | 58                  | PERFORMING RIGHTS AND IN-<br>FRINGEMENT OF COPYRIGHT - - - | 59                  |
| POSITION OF LOCAL AUTHORI-<br>TIES - - - - - | 58                  | LOCAL AUTHORITIES AS COPYRIGHT<br>OWNERS - - - - -         | 61                  |

FOR THE GENERAL LAW RELATING TO COPYRIGHT, See HALSBURY'S LAWS OF ENGLAND 2ND (ED.), TITLE "COPYRIGHT."

**Definition.**—Copyright is the sole right to produce or reproduce a work, which is capable of being the subject of copyright protection, or any substantial part thereof, in any material form whatsoever, and to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public. It being necessary, however, in view of the many methods employed in the reproduction of copyright works, and of certain legal decisions, to amplify this definition, sect. 1 (2) of the Copyright Act, 1911 (*a*), not only contains the definition already quoted, but goes on to provide that copyright is to include, if a work is unpublished, the sole right to publish the work or any substantial part of it. Copyright also includes the sole right to produce, reproduce, perform, or publish any translation of a work, and in the case of a dramatic work, the sole right to convert it into a novel or other non-dramatic work, and in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise; and in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film or other contrivance by means of which the work may be mechanically performed or delivered. Copyright also includes the sole right to authorise any such act as aforesaid.

Under the provisions of sect. 2 (1) of the Act of 1911 (*b*), copyright is infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by the Act of 1911 conferred on the owner of the copyright. But in the provisos to sect. 2 (1) of the Act are described certain acts which are not to constitute an infringement of copyright. [156]

**Position of Local Authorities.**—Copyright may be infringed by a local authority as well as by an ordinary citizen or corporate body. A local authority may come into contact with the holder of a copyright in various ways. They may, for example, maintain concert halls, and either lease them to other persons for musical or dramatic performances or dances, or they may organise or promote musical entertainments or rent a municipal orchestra or choir by whom copyright works are performed. These are typical conditions under which a local authority may be confronted by problems involving the question of copyright.

By sect. 2 (3) of the Act of 1911 (c) copyright in a work is deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work, without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright. [157]

**Performing Rights and Infringement of Copyright.**—Where a local authority promote entertainments at which literary, dramatic or musical works are publicly performed (cc), the decision in the case of *The Performing Right Society v. Bradford Corp. (d)* has cast a duty on them, and, indeed, on every owner of a hall or place of entertainment, to exercise care in the control of works performed therein, since it was decided in that case that where a council organise a musical entertainment in premises in their possession and control, they are responsible for performances infringing the copyright in musical works. This liability is not avoided by the council's warning the actual performer not to perform copyright works, though where the programme has been examined by the council, without the detection of any works which form the subject of copyright, and all reasonable precautions have been taken for ensuring that the performers shall not present substituted copyright works, then the council will not be liable if different works, which are the subject of copyright, are actually performed. Even if, as in the Bradford case, the council, in engaging an orchestra, leave the whole of the arrangements to the conductor, but warn him not to perform copyright music, they will nevertheless be liable for an infringement of copyright by the conductor. The council in such cases will only be exempt if they were not aware, and had no reasonable ground for suspecting, that any performance would be an infringement of copyright. The judgment of Mr. (now Lord) Justice ROCHE is of interest on this point. He said : "Their policy [that of a committee of the council], a very natural and legitimate one if they could carry it out, was to put the burden on the performers. I am unable to hold, however, that that is enough. Singers may be young and inconsiderate—whether young or old they may be inconsiderate—and regardless of others or of the rights of owners of copyright, and I decline to hold that an organiser of a concert can shift the burden under this sub-section (i.e. 2 (3) of the Act of 1911, see *ante*) by merely saying : 'I have told the singers or performers that they are not to sing copyright works.' . . . The sub-section is aimed at the proprietor of a theatre or other place of entertainment—not at the organiser or giver or presenter of the performance . . . but the owner of the building." After quoting the sub-section the judge added that the defendant corp. had permitted these places to be used for their private profit, so that the concerts should not be a burden on the rates.

Although a great number of musical, literary and dramatic works are not the subject of copyright, there are probably more copyright works performed than works the performance of which is not subject to any restriction. This means that a council must ascertain whether

(c) 3 Statutes 725.

(cc) Permitting an audience to hear a wireless performance by means of a loud-speaker may itself be a performance; *Performing Right Society, Ltd. v. Hammonds Bradford Brewery Co., Ltd.*, [1934] Ch. 121; Digest (Supp.).

(d) (1921), MacGillivray's Copyright Cases, 309.

a work is copyright before they allow the work to be performed in public. Councils who maintain municipal orchestras or choirs, or who own premises which are constantly let for entertainments, usually appoint a special committee to deal with all matters relating to the letting of the premises for entertainments, to supervise the works to be performed, and the general control of the performers. The work of such a committee is much affected by the activities of the Performing Right Society—an organisation of composers, authors and owners of copyright in musical works, who through their members and affiliation with similar societies in other countries, control the performing rights in nearly 2,000,000 musical works, both British and foreign, and who grant general licences to applicants. Such licences carry with them a right to the public performance of any work controlled by the society. Nearly 500 local authorities now work under the society's licences.

The society grant licences to councils covering musical performances at all halls, buildings, parks, piers, pleasure gardens, bandstands or other places which are the property of or controlled by the council. The society's annual charge for such a licence is calculated (1) as a percentage on the *annual expenditure* or *subsidy* in respect of entertainments of which music forms a part, such as band performances, or any other form of musical entertainment provided by or on behalf of the council; and (2) as a percentage on the *annual gross receipts*, where the council receive a rent or other monetary consideration for the letting of their property for musical entertainments (including concerts, dances, music in parks and at bazaars, exhibitions, etc., or performances by troupes of pierrots) according to the following tariff :

(1) Where entertainments of which music forms a part are provided by, or on behalf of, or are subsidised by, the licensee—

2 per cent. on the first £1,000 of the annual expenditure and/or subsidy ;

1 per cent. on the second £1,000 of the annual expenditure and/or subsidy ; and

$\frac{1}{2}$  per cent. on the residue.

(2) Where the premises are let for entertainments of which music forms a part—

On the gross annual amount received by the licensees as rent or other monetary consideration for letting the premises or any part of them for such musical entertainments—

5 per cent. on the first £1,000 of such receipts ;

$2\frac{1}{2}$  per cent. on the second £1,000 ; and

1 per cent. on the residue.

One-half of the fee (or the full minimum fee of £5 5s., whichever is the greater) on the estimated expenditure and/or receipts is to be paid on the commencement of each annual period, and the balance (if any) on the making up of the annual account.

This tariff does not apply (1) to any performance at entertainments provided by or on behalf of the licensee in respect of which the licensee incurs no expenditure and grants no subsidy, (2) to any performance at entertainments provided by or on behalf of the licensee which are given by means of electrical or mechanical instruments or appliances, nor (3) to any performance at entertainments provided by persons permitted to use the premises of the licensee in respect of which the licensee receives no rent or other monetary consideration. [158]

**Local Authorities as Copyright Owners.**—There are a number of obvious cases in which a local authority are the owners of copyright. These cases arise where documents are prepared in the ordinary course of the authority's administration. Thus, a copyright arises in favour of a local authority in the Agenda and Minutes of the council and its various committees, in Reports of officers and committees, and in such documents as Library Catalogues, the Annual Report and the Annual Financial Statement of the Council. Moreover, copyright in a town planning scheme prepared by a local authority, in the preliminary statement of the scheme and the maps prepared at the various stages of the scheme will vest in the local authority concerned.

There are certain special circumstances in which a local authority may become the owner of a copyright. They may, for example, hold a competition with a view to obtaining a design for a new public building. Again, one of their officers may be instructed by the council to prepare a scheme or report on some particular subject. In all these and cognate cases, when the work is done and if the council have actually employed the person, *i.e.* have paid him and given him definite instructions, they will be owners of the copyright in the plans, scheme or report (*e*). The subject-matter of the copyright must, however, be made in the course of the architect's or officer's employment, and consequently, if an officer or other person in his spare time, and without reward, produces something which may be the subject-matter of copyright, the council or other employer will acquire no right in the work (*f*). Where the producer of the work is a regular officer of the council, the fact that no extra emolument is promised will not vitiate the council's right over the work, so long as they have actually commissioned the officer to attempt the work and have given him facilities for the purpose (*g*).

Let us suppose, for example, that a borough surveyor, without receiving any instructions from his council, prepares a scheme for the more effectual drainage of his borough : he will be the owner of the copyright in the plans and specifications in respect of the scheme. The test is whether or not the council have actually commissioned the officer to do the work : if they have, then the copyright vests in them ; if they have not, the copyright vests in the officer unless and until an arrangement has been made between the two parties.

With regard to plans, where these are of proposed alterations or works, or of any matter which will entail work in the future, then the plans will be copyright ; and it would seem that the copyright in any plan made for the use of the local authority will vest in that authority. In certain cases, however, it has been provided by statute that copies may be taken of accounts, plans or other documents and the council's absolute right over such documents is affected to the extent of this statutory right of persons interested and their skilled agents (*h*) to take copies. [159]

(*e*) Copyright Act, 1911, s. 5 (1) (b) ; 3 Statutes 726.

(*f*) *Byrne v. Statist Co., Ltd.*, [1914] 1 K. B. 622 ; 13 Digest 166, 41.

(*g*) Copyright Act, 1911, s. 5 (1) (6) ; 3 Statutes 726.

(*h*) *R. v. Bedwelly U.D.C., Ex parte Price* (1933), 31 Knight, L. G. Reports, 480 ; Digest (Supp.).

# CORONERS

|                                      | PAGE |                                    | PAGE |
|--------------------------------------|------|------------------------------------|------|
| GENERAL - - - - -                    | 62   | CONTEMPT OF COURT - - - - -        | 70   |
| CLASSIFICATION OF CORONERS - - - - - | 63   | TAKING PHOTOGRAPHS IN COURT        | 71   |
| CORONERS' DISTRICTS IN COUN-         |      | WHO MAY ATTEND INQUEST             | 71   |
| TIES - - - - -                       | 63   | THE JURY - - - - -                 | 71   |
| APPOINTMENT - - - - -                | 63   | CASES IN WHICH JURY REQUIRED       | 71   |
| QUALIFICATION - - - - -              | 64   | VIEW OF THE BODY - - - - -         | 72   |
| JURISDICTION - - - - -               | 65   | WITNESSES - - - - -                | 72   |
| SALARY AND FEES - - - - -            | 65   | MEDICAL WITNESSES - - - - -        | 73   |
| SUPERANNUATION - - - - -             | 65   | PUBLICATION OF EVIDENCE            | 74   |
| RESIGNATION - - - - -                | 66   | VERDICT - - - - -                  | 74   |
| REMOVAL FROM OFFICE - - - - -        | 66   | CERTIFICATE AS TO DEATH AND        |      |
| FRANCHISE CORONERS - - - - -         | 66   | VERDICT - - - - -                  | 74   |
| DEPUTY AND ASSISTANT DEPUTY          |      | BURIAL ORDER - - - - -             | 74   |
| CORONERS - - - - -                   | 67   | THE INQUISITION - - - - -          | 74   |
| DUTIES OF CORONERS - - - - -         | 67   | QUASHING INQUISITION - - - - -     | 75   |
| PRIVILEGES OF CORONERS - - - - -     | 69   | DEPOSITIONS OF WITNESSES - - - - - | 75   |
| LIABILITIES OF CORONERS - - - - -    | 69   | EXPENSES - - - - -                 | 76   |
| THE INQUEST - - - - -                | 70   | RETURNS - - - - -                  | 76   |
| ADJOURNMENT OF INQUEST - - - - -     | 70   | LONDON - - - - -                   | 76   |
| PROCEDURE IN CASES OF MURDER,        |      |                                    |      |
| MANSLAUGHTER OR INFANTICIDE          | 70   |                                    |      |

*See also titles :*

BURIAL AND CREMATION;  
CORPSES;  
CREMATION;  
MORTUARIES;

OFFICIAL BUILDINGS (as to the pro-  
vision of Coroners' Courts);  
POST-MORTEM EXAMINATIONS.

**General.**—Coroners comprise county coroners, borough coroners, franchise coroners, the King's coroner and attorney (whose position differs from that of other coroners (*aa*)), and the coroner of the King's household. Originally county coroners were appointed by the free-holders of the county on the receipt of a writ from the Lord Chancellor, but the right of making an appointment was transferred to the county council by sect. 5 of the L.G.A., 1888 (*a*). Similarly the right of appointing a coroner for a quarter sessions borough with a population of 10,000 at the census of 1881 was transferred to the council of the borough by s. 171 of the Municipal Corpsns. Act, 1882 (*b*).

The duties of a coroner are to hold inquests in the name of the King, (1) upon the body of a dead person, including cases where the body is destroyed or irrecoverable; (2) in the City of London, after an outbreak of fire, although no death may have been caused by it; and (3) on occasions to act in place of the sheriff of the county.

The rules of evidence applicable to proceedings in the High Court or the Criminal Courts are not applicable to the coroner's court.

The chief statutes affecting coroners are: the Coroners Act, 1887, the Coroners Act, 1892, and the Coroners (Amendment) Act, 1926 (*c*). Other Acts applicable to certain areas include: the City of London Fire Inquests Act, 1888 (*d*), the Yorkshire Coroners Act, 1897 (*e*), and the Lincolnshire Coroners Act, 1899 (*f*).

(*aa*) See p. 67, *post*.

(*a*) 10 Statutes 690.

(*b*) *Ibid.*, 632.

(*c*) See 3 Statutes 760—777, 780—798.

(*d*) 51 & 52 Vict. c. xxxviii., a local Act.

(*f*) *Ibid.*

(*e*) 3 Statutes 779.

Apart from the holding of inquests or inquiries into deaths, the coroner has jurisdiction to inquire as to treasure trove. Further he acts as sheriff's substitute if the sheriff be interested in any matter relating to his duties as such. By virtue of his office the coroner is a justice of the peace with power to cause felons to be apprehended.

Sect. 21 of the Coroners (Amendment) Act, 1926 (*g*), allows cases of natural death to be passed over by the coroner after post-mortem examination and inquiry but without an inquest, while sect. 18 (*h*) permits an inquest to be held without a jury in many cases in which a jury was formerly required. Sect. 20 (*i*) has the effect of removing from the coroner most cases of murder, manslaughter and infanticide in which a person is already charged by the examining justices, though a person may still be committed for trial upon a coroner's inquisition.

[160]

**Classification of Coroners.**—There are three classes of coroners, namely, coroners by virtue of their office in some other capacity; county and borough coroners appointed respectively by county and borough councils, and franchise coroners appointed by letters patent or under a royal grant or charter (*j*), including the King's Coroner and Attorney.

The Lord Chief Justice and all the judges of the High Court are by virtue of their office coroners for the whole of England and Wales. Their jurisdiction is not prejudiced by anything in the Coroners Act, 1887 (*k*). [161]

**Coroners' Districts in Counties.**—The county council of a county may at any time, and must if so directed by the Secretary of State, submit to him a draft order providing for the division of the county into such coroners' districts as they think expedient, or for the alteration of any existing division of the county into coroners' districts. The Secretary of State, after taking into consideration any objections to the draft order which have been made in the prescribed manner and within the prescribed time, may make the order, either in the terms submitted, or with such modifications as he thinks fit (*l*).

When a county is divided into districts the county council must assign one of such districts to each of the persons holding the office of county coroner, and upon his death, resignation or removal, each of his successors and every other person thereafter elected to the office of coroner in the county must exercise the office according to the Acts relating to coroners (*m*). This provision is applied to districts formed or allowed under the Act of 1926, and to coroners appointed thereunder by sect. 12 (4) of that Act (*n*). [162]

**Appointment.**—On a vacancy arising in the office of coroner for a county or borough, the council of the county or borough must give

(*g*) 3 Statutes 790.

(*h*) *Ibid.*, 785.

(*i*) *Ibid.*, 789.

(*j*) The right to fill a vacancy in the office of a franchise coroner was abolished by the Coroners (Amendment) Act, 1926, s. 4; 3 Statutes 781, except in the case of the King's Coroner and Attorney and the Coroner of the King's Household, of the City of London, and of the Isles of Scilly.

(*k*) S. 34; 3 Statutes 774.

(*l*) Coroners (Amendment) Act, 1926, s. 12 (1); *ibid.*, 785. Coroners (Orders as to Districts) Rules, 1927, S.R. & O., 1927, No. 343; *ibid.*, 798.

(*m*) Coroners Act, 1844, s. 5; *ibid.*, 758, as altered by the L.G.A., 1888, s. 3 (xi.); 10 Statutes 689.

(*n*) 3 Statutes 785.

notice to the Secretary of State. Within three months after the occurrence of the vacancy, or such further time as he may allow, the council must appoint a duly qualified person to be coroner and forthwith give notice to the Secretary of State (*o*).

Upon appointment, a coroner makes a declaration of office in the prescribed form (*p*).

Where the district of a county coroner is wholly comprised within one administrative county, the coroner is appointed by the county council. Where, however, it is situate partly in one and partly in another administrative county forming part of an entire county comprising these administrative counties, the joint committee for the entire county make the appointment; and the salaries, fees and expenses of such coroner are to be defrayed in like manner as costs of the joint committee are directed to be defrayed by the L.G.A., 1888 (*q*).

In a county borough, and in a borough with a separate court of quarter sessions and having, according to the census of 1881, a population of 10,000 or more, the coroner is appointed by the borough council (*r*). Where the district of a county coroner is partly within and partly without a county borough, the coroner is elected by the county council. If there is a joint committee of the councils for this purpose, the question of the person to be elected must be referred to that committee, and the county council are required to appoint the person recommended by the majority of the committee. If the council of a county borough so require, a joint committee must be appointed for the purposes of coroners, consisting of such number of members of the county and borough councils as may be agreed upon, or, in default of agreement, as may be determined by a Secretary of State (*s*). [163]

**Qualification.**—As from May 1, 1927, no person is qualified to be appointed a county or borough coroner, or to be a deputy or assistant deputy to a coroner unless he is a barrister, solicitor, or legally qualified medical practitioner, of not less than five years' standing in his profession; but a person who was at that date, and who had been for a period of not less than five years, a franchise coroner or a deputy coroner, is not disqualified by this provision from being appointed a coroner (*t*).

A person so long as he is mayor, alderman, or councillor of a county or borough, and for six months after he ceases to hold such office, is disqualified for being appointed coroner by the council of that county or borough, or by a joint committee of which any members are appointed by that council, and for being the deputy of a coroner so appointed (*u*).

The coroner for a county or a borough, or the deputy of such coroner is disqualified for being elected or being a member of the council of that county or borough (*a*).

A county coroner must reside within the district for which he is

(*o*) Coroners (Amendment) Act, 1926, s. 2 (1), (2); 3 Statutes 781.

(*p*) See the Coroners Rules, 1927, Sched. (S.R. & O., 1927, No. 344); *ibid.*, 800; and the Coroners (Lancaster) Rules, 1927, Sched. (S.R. & O., 1927, No. 345).

(*q*) L.G.A., 1888, ss. 5 (2), (3), (4); 46; 10 Statutes 691, 724.

(*r*) Municipal Corpsn. Act, 1882, s. 171; *ibid.*, 632; L.G.A., 1888, ss. 34 (4), 38; *ibid.*, 713, 716.

(*s*) L.G.A., s. 34 (4), (5); *ibid.*, 713.

(*t*) Coroners (Amendment) Act, 1926, s. 1 (1); 3 Statutes 780.

(*u*) *Ibid.*, s. 1 (2); *Ibid.* See now, however, s. 122 of the L.G.A., 1933, which in effect extends this period of six months to twelve months; 26 Statutes 371.

(*a*) L.G.A., 1933, s. 59 (4); *ibid.*

appointed, or in some place wholly or partly surrounded by the district, or not more than two miles beyond the outer boundary of the district (b) ; and the same rule now applies to all coroners appointed under the Coroners (Amendment) Act, 1926 (c). [164]

**Jurisdiction.**—The jurisdiction of a coroner is restricted to the district for which he has been appointed. If an inquest is to be held, the coroner within whose district the body is lying has jurisdiction though the death or the cause of death arose elsewhere (d).

Where a coroner has reason to believe that a death has occurred in or near his district in such circumstances that an inquest ought to be held, and that, owing to the destruction of the body by fire or otherwise, or to the body lying in a place from which it cannot be recovered, an inquest cannot be held in the ordinary course, he may report the facts to the Secretary of State, who may direct an inquest to be held by the coroner making the report or by another coroner (e).

If it appears to a coroner that it is expedient to allow, or necessary to order, a body lying within his jurisdiction to be removed into the jurisdiction of another coroner, he may, with the consent of that coroner, allow or order the removal of the body to any place to which that coroner could have allowed or ordered the body to be removed, had it been within his jurisdiction (f). Where the bodies of two or more persons whose deaths appear to have been caused by the same accident or occurrence are within the jurisdiction of different coroners, and it is impracticable for the coroners to agree as to the removal of the bodies into the jurisdiction of one coroner, the Secretary of State may direct the removal of any of the bodies into the district of one of the coroners and for the holding of the inquests by that coroner (g). [165]

**Salary and Fees.**—Every council having power to appoint a coroner is required to pay the coroner appointed by them an annual salary at the rate fixed by agreement with him. If the council and the coroner are unable to agree as to a proposed alteration of the rate of salary, the Secretary of State may, on the application of either party, fix the rate, and thereafter the rate of salary so fixed will come into force from such date as the Secretary of State may determine (h). As regards coroners holding office on May 1, 1927, it is provided that, subject to any alteration under the above provision, the salary of a county coroner shall continue to be payable at the rate in force on that day ; and that the salary of a borough coroner shall in default of agreement be at a rate fixed by the Secretary of State (i). [166]

**Superannuation.**—Upon the retirement of a county or borough coroner after not less than five years' service, the council by whom his salary is payable may grant him a pension if he has attained the age of sixty-five years ; or, if they are satisfied by a medical certificate, that he is incapable of discharging the duties of his office, and that such incapacity is likely to be permanent (k). The pension is to be of such

(b) Coroners Act, 1844, s. 5 ; 3 Statutes 758.

(c) S. 12 (4) ; *ibid.*, 785.

(d) See Coroners Act, 1887, ss. 3 (1), 7 (1) ; *ibid.*, 760, 765.

(e) Coroners (Amendment) Act, 1926, s. 18 ; *ibid.*, 788.

(f) *Ibid.*, s. 16 (1).

(g) *Ibid.*, s. 17.

(h) *Ibid.*, s. 5 (1), (2).

(i) *Ibid.*, s. 5 (5).

(k) *Ibid.*, s. 6 (1).

amount as may be agreed upon between him and the council, not exceeding the scale contained in the First Schedule to the Act of 1926 (*l*).

These provisions relating to superannuation do not apply to any coroner holding office on May 1, 1927, unless, upon his application, a resolution applying them to him is passed by the council (*m*). A coroner to whom these provisions apply is required to vacate his office at any time after he has completed fifteen years' service, and has attained the age of sixty-five years, if called upon to do so by the council ; but in that case, in the absence of agreement to the contrary, the coroner is entitled to receive the maximum pension which the council are empowered to grant having regard to the length of his service (*n*).

【167】

**Resignation.**—A county or borough coroner may resign his office by giving notice in writing to the council having power to appoint his successor ; but the resignation does not take effect unless and until it is accepted by the council (*o*). 【168】

**Removal from Office.**—Any coroner may be removed from his office by the Lord Chancellor for inability or misbehaviour in the discharge of his duty (*p*). If convicted of extortion or corruption, or wilful neglect of his duty, or misbehaviour in the discharge of his duty, he may (unless his office is annexed to another office) in addition to any other punishment, be adjudged by the court before whom he is convicted to be removed from his office (*q*).

This provision does not prejudice the common law jurisdiction of the Lord Chancellor or the High Court in relation to the removal of a coroner, or the jurisdiction of the High Court in relation to or over a coroner or his duties (*r*). The Court of King's Bench (now the High Court) has always possessed and frequently exercised the jurisdiction of treating misbehaviour on the part of a coroner as contempt of court, and punishing it with imprisonment, fine or censure.

A borough coroner holds office during good behaviour, and he may therefore in a proper case be removed by the council which appointed him (*s*). 【169】

**Franchise Coroners.**—For the purposes of the Coroners Act, 1887, a "franchise coroner" is defined to mean the coroner of the King's household, a coroner appointed by the King in right of his Duchy of Lancaster, and a coroner for a town corporate, liberty, lordship, manor, university, or other place, the coroner for which before September 16, 1887, was appointed by any lord, or was appointed otherwise than by election of the freeholders of a county or part of a county, or by a borough council ; and the expression "franchise" means the area within which the franchise coroner exercises jurisdiction (*t*).

(*l*) 3 Statutes 796.

(*m*) Proviso to s. 6 (1) ; 3 Statutes 783.

(*n*) *Ibid.*, s. 6 (1), (2).

(*o*) *Ibid.*, s. 2 (3).

(*p*) Coroners Act, 1887, s. 8 (1) ; *ibid.*, 765. In the county of Lancaster this jurisdiction of the Lord Chancellor is exercised by the Chancellor of the Duchy of Lancaster (*ibid.*, s. 39 (1) ; *ibid.*, 775).

(*q*) *Ibid.*, s. 8 (2).

(*r*) *Ibid.*, s. 35.

(*s*) Municipal Corporns. Act, 1882, s. 171 (2) ; 10 Statutes 632.

(*t*) Coroners Act, 1887, s. 42 ; 3 Statutes 776.

The King's Coroner and Attorney, though not within the above definition is usually described as a franchise coroner. He is appointed by the Lord Chief Justice, and in practice holds the post of Master of the Crown Office. He has the custody of the records of the High Court on the Crown side; and has various functions in connection with criminal informations in the King's Bench Division and judgments on the Crown side of that division.

The coroner of the King's household is appointed by the Lord Steward of the King's household. He has exclusive jurisdiction in respect of inquests on persons whose bodies are lying within the limits of any of the King's palaces, or within the limits of any other house where the King is then "demurrant" and abiding (*u*).

Subject to certain exceptions, the right of any person to fill a vacancy in the office of franchise coroner ceases on the occurrence of the first vacancy in that office after December 15, 1926, and for all purposes relating to coroners, the franchise area, if and in so far as it is situate in a borough, the council of which have power to appoint a coroner, merges in the borough, and if and in so far as it is not so situate, merges in the county (*a*). The coroners excepted from this provision are mentioned in sub-sect. (5) of the section, and are the King's coroner and attorney, the coroner of the King's household, and the coroners for the City of London and the Isles of Scilly. [170]

**Deputy and Assistant Deputy Coroners.**—Every coroner, whether for a county or a borough, must appoint, by writing under his hand, a fit person approved by the chairman or mayor as the case may be, of the council who appointed him, to be his deputy, and may revoke such appointment. But a revocation does not take effect until the appointment of another deputy has been approved. A duplicate of the appointment is to be sent to and preserved by the council (*b*).

A county or borough coroner may also appoint an assistant deputy to act for him, and the method of appointment is the same as in the case of a deputy coroner, except that a revocation of the appointment by the coroner takes effect at once (*c*).

A deputy may act for the coroner during his illness, or absence for any lawful or reasonable cause, or at any inquest which the coroner is disqualified for holding (*d*). An assistant deputy may act for the deputy in similar circumstances or when the office of coroner is vacant (*e*).

The deputy of a coroner, notwithstanding that the coroner has vacated his office by death or otherwise, continues in office until a new deputy is appointed, and is entitled to receive in respect of the period of the vacancy the like remuneration as the vacating coroner (*f*). [171]

**Duties of Coroners.**—It is the duty of a coroner: (1) to inquire into the cause of death by holding an inquest *super visum corporis*, or by ordering a post-mortem examination; (2) to hold inquests upon treasure trove; and (3) to act upon certain occasions in the place of the sheriff.

(*u*) Coroners Act, 1887, s. 29; Statutes 772.

(*a*) Coroners (Amendment) Act, 1926, s. 4 (1); *ibid.*, 781. Possible consequential alterations of coroner's areas in a county are made under s. 12 of the Act.

(*b*) Coroners Act, 1892, s. 1 (1), (2); *ibid.*, 777.

(*c*) Coroners (Amendment) Act, 1926, s. 11 (1), (3); *ibid.*, 784.

(*d*) Coroners Act, 1892, s. 1 (3); *ibid.*, 778.

(*e*) Coroners (Amendment) Act, 1926, s. 11 (2); *ibid.*, 784.

(*f*) Coroners Act, 1892, s. 1 (4); *ibid.*, 778.

In the City of London his duties also include the holding of inquests on outbreaks of fires (g). [172]

*Inquests super visum corporis.*—When a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that he has died in prison, or in such place or circumstances as to require an inquest to be held in pursuance of any Act, whether the cause of death arose within his jurisdiction or not, it is his duty to issue as soon as practicable his warrant for summoning a jury to inquire, touching the death of any such person (h).

A coroner may hold one inquest upon the bodies of several persons, provided they were all killed by the same cause and died at the same time (i).

The coroner has not an absolute right to hold an inquest in every case in which he chooses to do so (k); nor is it in general his duty voluntarily to intrude into a private house (l), when he has received no notice from the police or other authority that death has occurred or that a body lies there in circumstances which appear to call for inquiry. If notice of death is accompanied by information that it was probably due to a natural cause, the coroner may exercise his discretion by not holding an inquest, or even by not ordering a post-mortem examination.

Where, however, he receives from the proper authorities a report with a view to an inquest, and there is no medical certificate of the cause of death, he has no discretion, in the absence of further information, to refuse to hold an inquest upon the ground that it is unnecessary (m).

This rule, however, is qualified by s. 21 of the Act of 1926 (mm).

A coroner may not delay holding an inquest after notice of death, or of the finding of a dead body has been given to him (n). At or before the inquest, he must view the body, and if, before the body has been buried, he so directs, or a majority of the jury so desires, the body must also be viewed by the jury. An order of a coroner authorising the burial of a body upon which he has decided to hold an inquest may be issued at any time after he has viewed the body (o). [172A]

*Removal of Bodies out of England.*—The body of a deceased person may not be removed out of England until the expiration of four days after notice to the coroner within whose jurisdiction the body is lying, or otherwise than in accordance with the prescribed procedure (p). [173]

*Inquests on Treasure Trove.*—Any gold, silver coin, plate or bullion found concealed in a house, or in the earth or other place, the owner of which is unknown, is treasure trove. The treasure belongs to the King or his grantee, having the franchise of treasure trove. If the treasure was not concealed by the owner, but was merely abandoned

(g) See *post*, p. 77.

(h) Coroners Act, 1887, s. 3 (1); 3 Statutes 760.

(i) R. v. West (1841), 1 Q. B. 826.

(k) R. v. Price (1884), 12 Q. B. D. 247, *per* STEPHEN, J., at p. 248; 13 Digest 261, 416.

(l) R. v. Clerk (1702), 1 Salk. 377; 13 Digest 244, 163, *per* HOLT, C.J.: "The coroner need not go *ex officio* to take the inquest, but ought to be sent for."

(m) *Re Hull* (1882), 9 Q. B. D. 689; 13 Digest 241, 114.

(mm) 3 Statutes 790.

(n) *Re Hull, supra*, *per* Lord SELBORNE, L.C., at p. 692.

(o) Coroners (Amendment) Act, 1926, s. 14; 3 Statutes 787.

(p) Births and Deaths Registration Act, 1926, s. 4; 15 Statutes 769; Removal of Bodies from England Rules, 1927, rr. 2, 3, 4 (S.R. & O., 1927, No. 557).

or lost, it is not treasure trove, and in such case it belongs to the first finder as against every one but the owner.

It is the duty of the coroner to go where treasure is said to have been found, and issue his warrant for summoning a jury with a view to holding an inquest to inquire as to the treasure that is found, as to who were the finders, and who is suspected thereof. He has no jurisdiction to inquire into any question of title, as the title of the Crown is independent of the finding of the coroner's jury. Concealment of treasure trove is a misdemeanor at common law. [174]

**Privileges of Coroners.**—A coroner and a deputy coroner, engaged in the discharge of their official duties, are privileged from arrest (*q*). Coroners are exempt from serving on juries (*r*), and, generally, are exempt from serving in offices inconsistent with their duties. [175]

**Liabilities of Coroners.**—The Lord Chancellor may remove any coroner from his office for inability or misbehaviour in the discharge of his duty (see *ante*, p. 66, as to this, and as to the power of removal in the High Court).

As to inability, a coroner may be removed if he has not sufficient knowledge and capacity ; if he be so engaged in other business that he has not sufficient time to attend to his duties ; if, being a county coroner, he lives in the extreme part of the county so that he cannot conveniently exercise his office ; if he be disabled and broken with age or disease ; or if he be elected or appointed to some incompatible office, such as sheriff (*s*).

Unnecessary delay in holding an inquest, or an improper exercise of judgment in refusing to hold an inquest, constitutes a misdemeanor for which a coroner may be removed from office (*t*).

The following are examples of misbehaviour for which a coroner has been removed from office or otherwise punished : Intoxication and refusing to hold an inquest after keeping a jury, duly summoned, waiting for two hours ; intemperance and being convicted of a criminal offence ; committing a prisoner to gaol for murder after the jury had returned a verdict of accidental death ; making a false return of the inquisition ; recording a verdict different from that found by the jury ; packing or tampering with the jury ; wrongfully refusing to receive evidence of an accused or suspected person ; accepting a consideration not to hold an inquest, or to favour a person suspected or found guilty by the jury ; exactation in demanding money for performing his office (*u*).

If a coroner fails to comply with the requisition of a majority of the jury who are of opinion that the cause of death has not been satisfactorily explained, to summon as a further witness some legally qualified medical practitioner named by them, and to direct a post-mortem examination of the deceased by such practitioner, he is guilty of a misdemeanor (*v*). [176]

(*q*) *Callaghan v. Twiss* (1847), 9 I. L. R. 422 ; 13 Digest 239, c ; *Ex parte Middlesex Deputy Coroner* (1861), 6 H. & N. 501 ; 13 Digest 239, 88.

(*r*) Juries Act, 1870, s. 9 and Sched. ; 10 Statutes 73, 76.

(*s*) See 7 Halsbury (Hailsham ed.), title "Coroners," pp. 647, 648, and the authorities there cited.

(*t*) *Re Hull* (1882), 9 Q. B. D. 689 ; 13 Digest 241, 114.

(*u*) See 7 Halsbury (Hailsham ed.), title "Coroners," pp. 648, 649, and the authorities there cited.

(*v*) Coroners Act, 1887, s. 21 (3) ; 3 Statutes 770.

*Excess of Jurisdiction.*—As the coroner's court is a court of record, of which the coroner is judge, an action will not lie against him in respect of any matter within his jurisdiction done by him in the exercise of his judicial functions (a). He may, however, be liable in damages in respect of acts done in excess of, or without, jurisdiction (b). [177]

**The Inquest.**—Subject to certain statutory exceptions, the inquest must be held at some place within the jurisdiction of the coroner holding the same (c). It may not be held on licensed premises if other suitable premises have been provided for the purpose (d).

As the holding of an inquest is a judicial act, an inquest may not be held on a Sunday, Sunday being a *dies non juridicus* (e). [178]

**Adjournment of Inquest.**—The coroner may, in his discretion, if sufficient evidence is not at hand, or if he or the jury suspect undue influence, or that the witnesses are secreted or not forthcoming (f), or for other good reason, adjourn the inquest to another day, first taking the recognisances of the jurors and of the witnesses for their appearance at the adjourned time and place. Except in special circumstances, he should not adjourn for the purpose of drawing up the inquisition. This should be drawn up immediately after the verdict is returned, and be forthwith signed by the jurors (g). [179]

**Procedure in cases of Murder, Manslaughter, or Infanticide.**—If on an inquest touching a death, the coroner is informed before the verdict that some person has been charged before the examining justices with the murder, manslaughter or infanticide of the deceased, he must adjourn the inquest, in the absence of reason to the contrary, until after the conclusion of the criminal proceedings, and may, if he thinks fit, discharge the jury (h). Criminal proceedings are not deemed to be concluded until no further appeal can be made without an extension of time being granted by the Court of Criminal Appeal (i). After such conclusion, the coroner may resume the adjourned inquest, if he is of opinion that there is sufficient cause to do so. If, having regard to the result of the criminal proceedings, he decides not to resume, he must furnish the registrar of deaths with a certificate stating the result of the criminal proceedings, and the particulars necessary for the registration of the death, so far as ascertained at the inquest: and the registrar must enter the death and particulars in the prescribed form and manner (k). [180]

**Contempt of Court.**—The coroner's court being a court of record, the coroner has power at common law to commit for contempt of court, but his power is limited to contempt committed *in facie curiae*, as his court is an inferior court of record (l). [181]

(a) *Floyd v. Barker* (1607), 12 Co. Rep. 23, 24; 14 Digest 238, 2251; *Hamond v. Howell* (1677), 2 Mod. Rep. 218; 38 Digest 77, 544; *Thomas v. Churton* (1862), 2 B. & S. 475; 13 Digest 240, 106.

(b) *Foxhall v. Barnett* (1858), 23 L. J. Q. B. 7; 18 Digest 240, 107.

(c) Coroners Act, 1887, s. 7; 3 Statutes 765.

(d) Licensing (Consolidation) Act, 1910, s. 83; 9 Statutes 1032.

(e) *Mackalley's Case* (1611), 9 Co. Rep. 61b, 65a, 66b; 41 Digest 88, 252; *Hoyle v. Cornwallis (Lord)* (1720), 1 Stra. 387; 42 Digest 944, 176.

(f) Umfreville on the Office and Duty of Coroners (1761), Vol. II., p. 209.

(g) *R. v. Mallett and Chilcote* (1846), 1 Cox, C. C. 336; 13 Digest 255, 330.

(h) Coroners (Amendment) Act, 1926, s. 20 (1); 3 Statutes 789.

(i) *Ibid.*, s. 20 (6); *ibid.*, 790.

(k) *Ibid.*, s. 20 (4).

(l) See *R. v. Lefroy* (1873), L. R. 8 Q. B. 134; 13 Digest 554, 1121.

**Taking Photographs, etc., in Court.**—It is an offence to take or attempt to take in the coroner's court any photograph, or, with a view to publication, to make or attempt to make in court any portrait or sketch of either the coroner, a juror, or a witness, or to publish any photograph, portrait, or sketch so taken or made (m). [182]

**Who may Attend Inquest.**—Proceedings in the coroner's court are in general open to the public as of right; but as cases may occur where privacy may be requisite for the sake of decency, or where matters must be disclosed the publication of which might be productive of mischief without any possibility of good, the coroner has a discretion in all inquests *super visum corporis* to determine whether the public generally or any individual person shall be admitted to or excluded from the court (n).

It is the practice to allow counsel or solicitors representing interested parties to be present at inquests and to question witnesses, either by way of examination or cross-examination. But it is not the practice to allow counsel or solicitors to make a speech to the jury. [183]

**The Jury.**—The coroner, having decided to hold an inquest with a jury, issues his warrant for summoning not less than seven nor more than eleven good and lawful men to inquire touching the death of the person on whose body the inquest is to be held (o). If any person duly summoned as a juror at an inquest, does not, after being openly called three times, appear to such summons or appearing refuses without reasonable excuse to answer a question put to him, the coroner may impose on such person a fine not exceeding five pounds (p).

If the jury fail to agree on a verdict, and the minority consists of not more than two, the coroner may accept the verdict of the majority. In any other case of disagreement, he may discharge the jury and issue a warrant for summoning another jury (q).

The coroner's court is opened by proclamation and the names of the jury are called over. If an insufficient number appear, proclamation is made a second time, and if there are still insufficient jurors, the coroner may direct an officer forthwith to summon other good men from the neighbourhood until a sufficient number is obtained.

The jurors must be sworn by the coroner diligently to inquire touching the death of the person on whose body the inquest is about to be held, and a true verdict to give according to the evidence (r). No challenge can be made of any of the jurors (s). Any person may affirm, instead of being sworn, who objects to being sworn on the ground that he has no religious belief, or that taking an oath is contrary to his religious belief (t). [184]

**Cases in which Jury Required.**—The coroner must summon a jury if it appears to him that there is reason to suspect that the deceased came to his death by murder, manslaughter, or infanticide (u), or that the

(m) Criminal Justice Act, 1925, s. 41; 11 Statutes 420.

(n) *Garnett v. Ferrand* (1827), 6 B. & C. 611; 13 Digest 232, 1.

(o) Coroners Act, 1887, s. 3, as amended by the Coroners (Amendment) Act, 1926, s. 30, and Sched. II.; 3 Statutes 760, 795, 796.

(p) Coroners Act, 1887, s. 19 (1); *ibid.*, 768.

(q) Coroners (Amendment) Act, 1926, s. 15; *ibid.*, 787.

(r) Coroners Act, 1887, s. 3 (3); *ibid.*, 762.

(s) *R. v. Ingham* (1864), 5 B. & S. 257, *per* BLACKBURN, J., at p. 276; 13 Digest 249, 237.

(t) Oaths Act, 1888, s. 1; 8 Statutes 241.

(u) Coroners (Amendment) Act, 1926, s. 13 (2) (a); 3 Statutes 786.

death occurred in prison or in such place or circumstances as to require an inquest under any Act other than the Coroners Act, 1887 (a); or that the death was caused by an accident, poisoning or disease, notice of which is required to be given to a Government department, or to any inspector or other officer of a Government department, under any Act (b); or that the death was caused by the use of a vehicle in a street or public highway (c), or that the death occurred in circumstances, the continuance or possible recurrence of which is prejudicial to the health or safety of the public (d). [185]

**View of the Body.**—At or before the first sitting of an inquest, the coroner must view the body, and if, before the body is buried, the coroner so directs, or a majority of the jury so desires, the body must be viewed by the jury (e). The coroner can hold an inquest in respect of a body which is destroyed or irrecoverable (f). Subject to these exceptions, an inquest held without view of the body is wholly irregular and extra-judicial, and an inquisition founded thereon is void (g).

If the body has been interred before the coroner comes, he must cause it to be disinterred for the purpose of holding an inquest (h). This common law power of the coroner does not appear to be limited or controlled by sect. 25 of the Burial Act, 1857 (i), which requires the licence of the Home Secretary for the removal of a body.

If a coroner has given notice that he intends to hold an inquest on a body, the medical referee appointed by a cremation authority must not allow the cremation to take place until the inquest has been held (k).

A casual glance at the face of the dead person is not a sufficient view. The coroner should have an opportunity of seeing whether there are any marks of violence, and of ascertaining from the appearance of the body what was the occasion of death (l). [186]

**Witnesses.**—The coroner is required to examine on oath touching the death all persons who tender their evidence respecting the facts and all persons having knowledge of the facts whom he thinks it expedient to examine (m). Where the inquest is upon the body of a person dying by his own hand, any evidence offered to show that the deceased was *non compos mentis* at the time of his death must be received, as well as that tending to show he was *felo de se* (n).

If any person tenders evidence at an inquest which appears likely to incriminate himself, he should be warned by the coroner that he is not bound to incriminate himself, but if he persists his statement must be taken (o).

The coroner by virtue of his office may issue a summons commanding any person who can give information which will assist the jury to attend

(a) Coroners (Amendment) Act, 1926, s. 1, 3 (2) (b).

(b) *Ibid.*, s. 13 (2) (c). At 3 Statutes 786 will be found a list of Acts and statutory enactments to which this provision applies. (c) *Ibid.*, s. 13 (2) (d).

(d) *Ibid.*, s. 13 (2), (e).

(e) *Ibid.*, s. 14 (1).

(f) *Ibid.*, s. 18.

(g) *R. v. Haslewood, Ex parte Margerison*, [1926] 2 K. B. 468; Digest (Supp.).

(h) 2 Hawk. P. C., Book II., c. 9, s. 23.

(i) 2 Statutes 236.

(k) Cremation Act, 1902, s. 10; 2 Statutes 284; Cremation Regulations, 1930, r. 12 (7), S.R. & O., 1930, No. 1016; 23 Statutes 15.

(l) *R. v. Ferrand* (1819), 3 B. & Ald. 260, *per BEST*, J., at p. 264; 13 Digest 243, 147.

(m) Coroners Act, 1887, s. 4 (1); 3 Statutes 762.

(n) *Barclies Case* (1658), 2 Sid. 101; 13 Digest 232, 9.

(o) *Wakley v. Cooke* (1849), 4 Exch. 511, 516, 518; 13 Digest 244, 170.

the inquest and give evidence ; and if any person thus duly summoned does not appear, or appearing, refuses without lawful excuse to answer a question put to him, the coroner may impose on him a fine not exceeding five pounds (*p*). A person may not be fined under this statutory power and also punished under the coroner's power in that behalf for contempt of court (*q*).

In a case where there is a possibility of a verdict being found against a prisoner in custody the practice is for the coroner to notify the governor of the prison, and for the governor to make the necessary arrangements for the prisoner to attend the inquest (*r*).

If a person summoned as a witness refuses or neglects to attend, the coroner may issue his warrant to the constables within his jurisdiction, and to his special officer, commanding them to apprehend and bring such person into court. The warrant can only be executed within the jurisdiction of the coroner. In the case of a witness outside his jurisdiction, a Crown Office subpoena must be obtained and served upon him.

In a case of murder, manslaughter or infanticide, it is the duty of the coroner to put into writing the statements on oath of those who know the facts and circumstances, or so much of such statements as is material, and any such statement must be signed by the witness and also by the coroner (*s*). [187]

**Medical Witnesses.**—If it appears that the deceased was attended at his death or during his last illness by any legally qualified medical practitioner, the coroner may summon the practitioner as a witness. If, however, the deceased was not so attended, the coroner may summon any legally qualified medical practitioner who is at the time in actual practice in or near the place where the death happened. Any witness thus summoned may be asked to give evidence as to how in his opinion the deceased came to his death (*t*).

The coroner may, either in his summons for the attendance of such medical witness, or between the issue of the summons and the end of the inquest, direct him to make a post-mortem examination of the body of the deceased (*u*). If a medical practitioner fails to obey the summons above mentioned, then, in the absence of good and sufficient cause for such failure, he is liable on summary conviction, on the prosecution of the coroner or any two of the jury, to a fine not exceeding £5 (*a*).

Where a coroner is informed that the dead body of a person is within his jurisdiction, and there is reasonable cause to suspect that the person has died a sudden death of which the cause is unknown, if the coroner is of opinion that a post-mortem examination may prove an inquest to be unnecessary he may direct any legally qualified medical practitioner whom, if an inquest were held, he would be entitled to summon as a medical witness (see *ante*), or may request any other legally qualified medical practitioner, to make a post-mortem examination of the body of the deceased, and to report the result to him in writing ;

(*p*) Coroners Act, 1887, s. 19 (2), as amended by Coroners (Amendment) Act, 1926, s. 30, and Sched. II.; 3 Statutes 768, 795, 796.

(*q*) Coroners Act, 1887, s. 19 (3); *ibid.*, 768.

(*r*) H.O. Circular to Coroners, dated October 31, 1923 (439, 053/1).

(*s*) Coroners Act, 1887, s. 4 (2); 3 Statutes 762.

(*t*) *Ibid.*, s. 21 (1); *ibid.*, 770.

(*u*) *Ibid.*, s. 21 (2), as amended by Coroners (Amendment) Act, 1926, s. 31; *ibid.*, 770, 795.

(*a*) Coroners Act, 1887, s. 23; *ibid.*, 770.

and if, as a result of such examination, the coroner is satisfied that an inquest is unnecessary, he is required to send to the registrar of deaths a certificate stating the cause of death as disclosed by the report, and the registrar must make an entry in the register in the form and manner prescribed under the Registration Acts (b). [188]

**Publication of Evidence.**—A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority—this includes a coroner's court—is privileged if published contemporaneously with such proceedings; the privilege, however, does not extend to blasphemous or indecent matter (c). [189]

**Verdict.**—After hearing the evidence, the jury must give their verdict and certify it by an inquisition in writing, setting forth who the deceased was, and how, when, and where he came by his death (d).

The coroner may only communicate with the jury in open court (e). He is bound to accept the verdict of the jury, however insensate (f). A rider is not part of the verdict (g).

If the jury fail to agree, and the minority consists of not more than two, the coroner may accept the verdict of the majority. In any other case of disagreement, he may discharge the jury, and issue a warrant for summoning another jury (h). [190]

**Certificate as to Death and Verdict.**—After the inquest on any death, the coroner must send to the registrar of deaths the certificate required by the Registration Acts within the time required by the Acts. The certificate must give information concerning the death and specify the finding of the jury (if the inquest was held with a jury) with respect to the cause of death, and also the time and place at which the inquest was held. The registrar must then enter, in the prescribed form and manner, the death and particulars as found at the inquest (i). [191]

**Burial Order.**—An order of a coroner authorising the burial of a body upon which he has decided to have an inquest may be issued at any time after he has viewed the body (k). The order must be given to the relative of the deceased or other person who is about to cause the body to be buried, or to the undertaker or other person having charge of the funeral (l). In case of a finding against a person of *felo de se* the coroner must give directions for the interment in the churchyard or burial ground of the parish or place to which the remains of such person might by law and custom be interred if the verdict of *felo de se* had not been found against such person (m). [192]

**The Inquisition.**—The finding of the jury is recorded in the inquisition, which must be in writing under the hands of the jurors who concur in the verdict, and of the coroner. Forms of Inquisition for cases

(b) Coroners (Amendment) Act, 1926, s. 21; 3 Statutes 790.

(c) Law of Libel Amendment Act, 1888, s. 3; 10 Statutes 418.

(d) Coroners Act, 1887, s. 4 (3); 3 Statutes 762.

(e) *R. v. Wood, Ex parte Anderson*, [1928] 1 K. B. 302; Digest (Supp.).

(f) *Smith's Case* (1696), Comb. 386; 13 Digest 246, 187.

(g) *R. v. Harding* (1908), 1 Cr. App. Rep. 219; 14 Digest 61, 269.

(h) Coroners (Amendment) Act, 1926, s. 15; 3 Statutes 787.

(i) Births and Deaths Registration Act, 1874, s. 16; 15 Statutes 742; Coroners (Amendment) Act, 1926, s. 13 (8); 3 Statutes 787.

(k) Coroners (Amendment) Act, 1926, s. 14 (2); 3 Statutes 787.

(l) Coroners' Rules, 1927, r. 5 (1), and Sched., Form 15 (S.R. & O., 1927, No. 344); *ibid.*, 800, 806.

(m) Interments (*Felo De Se*) Act, 1882, s. 2; 2 Statutes 277.

where the inquest is held with, and without, a jury, have been prescribed by the Coroners' Rules, 1927 (*n*), made under the Coroners (Amendment) Act, 1926 (*o*).

Coroners keep in their own custody all inquisitions except such as charge murder, manslaughter, or infanticide. These latter must be delivered to the proper officer of the court in which the trial of the party charged is to be held (*p*) ; or to the Director of Public Prosecutions, when the prosecution is undertaken by that official (*q*). In the case of persons executed in prison, the inquisition must be in duplicate, and one of the originals must be delivered to the sheriff (*r*). When a coroner vacates his office, or before then as regards bulky papers which he cannot store, his records may be handed over to the clerk of the peace of the county, or to the town clerk of the borough, according as the coroner is a county or a borough coroner. [193]

**Quashing Inquisition.**—A coroner's inquisition may be quashed upon the application of any person aggrieved thereby. This may be done : (1) by the High Court, under its common law jurisdiction, whether the inquisition contains a criminal charge or not ; (2) by the High Court, under statutory powers upon application by, or on the authority of, the Attorney-General (*s*) ; and (3) by the Court before whom any person criminally charged by the inquisition is arraigned ; the coroner's inquisition in such case being in effect an indictment (*t*).

An inquisition will be quashed if the inquest be not held *super visum corporis* (*u*). The private investigation of an accident by the coroner with one or more persons who are to serve on the jury is a ground for quashing the inquisition (*a*). An inquisition may be quashed on the application of the police authorities, made with the acquiescence of the coroner, on the suggestion of the jury that they are dissatisfied with the verdict previously returned by them (*b*). If material evidence is excluded by the coroner and the Court is of opinion that a miscarriage of justice has occurred by reason of the exclusion of material evidence, the inquisition will be quashed (*c*).

Where a coroner's inquisition charges a person with murder, manslaughter or infanticide, or of being accessory before the fact to a murder, the coroner must issue his warrant for arresting or detaining such person, and must bind by recognisance all persons examined before him who know anything material touching the said offence to appear at the next court of oyer and terminer or gaol delivery at which the trial is to be held, then and there to prosecute or give evidence (*d*). [194]

**Depositions of Witnesses.**—Formerly, the depositions of any witness examined on oath before the coroner at an inquest *super visum corporis*

(*n*) S.R. & O., 1927, No. 344, Sched. ; 3 Statutes 800 ; and Coroners' (Lancaster) Rules, 1927, Sched., S.R. & O., 1927, No. 345.

(*o*) S. 26 ; 3 Statutes 793.

(*p*) Coroners Act, 1887, s. 5 (3) ; *ibid.*, 763.

(*q*) Prosecution of Offences Act, 1879, s. 5 ; 4 Statutes 697.

(*r*) Capital Punishment Amendment Act, 1868, s. 5 ; *ibid.*, 642.

(*s*) Coroners Act, 1887, s. 6 ; 3 Statutes 764.

(*t*) *R. v. Ingham* (1864), 5 B. & S. 257 ; 13 Digest 249, 237.

(*u*) *R. v. Haslewood, Ex parte Margerison*, [1926] 2 K. B. 468 ; Digest (Supp.).

(*a*) *R. v. Divine, Ex parte Walton*, [1930] 2 K. B. 29 ; Digest (Supp.).

(*b*) *R. v. Wood, Ex parte Atcherley* (1908), 73 J. P. 40 ; 13 Digest 246, 182.

(*c*) *R. v. Carter* (1876), 45 L. J. (Q. B.) 711 ; 13 Digest 255, 332. For other examples of cases where the inquisition may be quashed, see 7 Halsbury (Hailsham ed.), pp. 685-87.

(*d*) Coroners Act, 1887, s. 5 (1) ; 3 Statutes 763.

were admissible in evidence upon the trial of a person on a charge of the murder or manslaughter of the deceased upon whose body the inquest was held, if it were proved that the witness was dead or unable to travel, or the court were satisfied that the witness was detained by means or procurement of the prisoner. In modern times, however, the courts have refused to admit such depositions when taken in the absence of the prisoner; and it would seem that the old practice relative to the admissibility of coroners' depositions must be considered as no longer in force, and that it is now essential that the accused person should have been present when the depositions were taken, and have had full opportunity to cross-examine (e). [195]

**Expenses.**—The council of a county or borough may from time to time make, alter and vary a schedule of fees, allowances and disbursements which may lawfully be paid by a coroner in the course of his duties (other than statutory fees payable to medical witnesses). A copy of every such schedule must be deposited with the clerk of the peace of the county or the town clerk of the borough, and a copy must also be delivered to every coroner concerned (f). [196]

**Returns.**—Every coroner must on or before February 1 in every year (and at other times when so required) transmit to the Home Secretary a return in writing, in such form and containing such particulars as the Home Secretary directs, of all cases in which an inquest has been held by him or by some person in lieu of him, during the year ending on the preceding December 31 (g). [197]

**London.**—The right to elect coroners was granted to the Corporation of London by Henry I. and they were empowered to hold pleas of the Crown and keep the records.

At the present time the administrative County of London is divided into six coroners' districts, but these districts do not include places such as the City, and the Liberty of the Tower, which were formerly exempt from the jurisdiction of any county coroner. The arrangement of these coroners' districts is regulated by an Order of the Secretary of State of November 3, 1930, as amended by an Order of August 6, 1932, made under sect. 12 (1) of the Coroners (Amendment) Act, 1926.

The present coroners' districts of London are :

Western—including Battersea, Chelsea, Fulham, Hammersmith and Wandsworth.

Central—including Finsbury, Holborn, Kensington, Paddington, St. Marylebone and City of Westminster.

Eastern—including Bethnal Green, Poplar, Shoreditch and Stepney (excluding the Liberty of the Tower).

Northern—including Hackney, Hampstead, Islington, St. Pancras and Stoke Newington.

Southern—including Camberwell, Lambeth and Southwark.

South-Eastern—including Bermondsey, Deptford, Greenwich, Lewisham and Woolwich.

(e) *R. v. Rigg* (1866), 4 F. & F. 1085; 18 Digest 257, 359; *R. v. Butcher* (1900), 64 J. P. 808; 18 Digest 256, 347.

(f) Coroners Act, 1887, s. 25, as amended by Coroners (Amendment) Act, 1926, ss. 29 (1), 30; 3 Statutes 771, 794, 795.

(g) Coroners Act, 1887, s. 28, as amended by Coroners (Amendment) Act, 1926, ss. 28, 31; *ibid.*, 772, 794, 795.

The coroner of the City of London as mentioned above is elected by the Mayor and commonalty of the City under a charter of Henry I. The Coroners Acts were applied to him as if he were a borough coroner, and as if the Common Council were the local authority, and any expenses under these Acts are to be defrayed out of the general rate (*h*). The coroner of the City of London must appoint a deputy and may appoint an assistant deputy (*i*).

The power of appointing a coroner for the Liberty of the Tower of London was vested in the Governor of the Tower by a charter of James II. This power, it has been held, was not transferred to the county council by the L.G.A., 1888, and the coroner for the county of London has no jurisdiction within the Liberty (*k*).

A coroner in London has a discretion to hold inquests in any place, although under the P.H. (London) Act, 1891, sect. 92 (*l*), the county council is bound to provide and maintain proper accommodation for the holding of inquests. Under sect. 93 of that Act, the county council are empowered to provide two buildings to which dead bodies found in London may on the order of a coroner be removed and preserved for the purpose of ultimate identification. The inquest on such body is then to be held by the same coroner as if such building were within the district of that coroner. The L.C.C. has not, however, so far provided any such building. [198]

The coroner of the City of London has special statutory powers enabling him to hold an inquest respecting the origin of a fire in the City of London. In any case where loss or injury within the City and its liberties has been brought to the knowledge of the Commissioner of City Police or the chief officer of the Metropolitan Fire Brigade, it is the duty of such Commissioner or chief officer to report the same forthwith to the coroner of the City (*m*), and in case of loss or injury by fire within the City and the liberties thereof situate in the county of Middlesex, it is the duty of the coroner to consider any such report, and to hold an inquest respecting the same, if he is of opinion that proper cause for such an inquiry exists (*n*).

Upon the inquest, it is the duty of the coroner to inquire into the cause and circumstances of the fire and connected matters and means for preventing the same; and also whether there is ground for believing that the fire was caused by the wilful and unlawful act of any person or persons, whether known or unknown, under such circumstances as to render him or them guilty of arson; and if such person or persons be known, and the evidence warrant it, the jury may find a verdict of arson against him. The verdict and inquisition are to have the effect of an indictment. If, however, any person with regard to whom such verdict was found was not present at the inquest, he must be taken before a magistrate sitting at the Mansion House or Guildhall Justice Room as an accused person to answer such charge (*o*). [199]

(*h*) Coroners (Amendment) Act, 1926, s. 32; 3 Statutes 795. As to the expenses of inquests in the City of London, see Coroners Act, 1887, s. 31; *ibid.*, 773.

(*i*) Coroners Act, 1892, and Coroners Amendment Act, 1926, s. 11; *ibid.*, 777, 784.

(*k*) *Re L.G.A.*, 1888, *Ex parte L.C.C.*, [1892] 1 Q. B. 33; 13 Digest 233, 16. The position was preserved by the Borough of Stepney (Tower of London) Scheme, 1901; S.R. & O., 1901, No. 540.

(*l*) 11 Statutes 1075.

(*m*) City of London Fire Inquests Act, 1888 (51 & 52 Vict., c. xxxviii.), s. 3.

(*n*) *Ibid.*, s. 2.

(*o*) *Ibid.*, s. 6.

# CORPORATE BUILDINGS

*See OFFICIAL BUILDINGS.*

## CORPORATE LAND

|                           | PAGE | PAGE                         |
|---------------------------|------|------------------------------|
| PRELIMINARY - - -         | 78   | SALE, EXCHANGE OR OTHER DIS- |
| LEASING AND LETTING - - - | 79   | POSAL - - - - - 81           |
| RENTS AND PROFITS - - -   | 80   | LONDON - - - - - 82          |

As to lands acquired by gift, *see also title GIFTS OF LAND AND OTHER PROPERTY.* For the position of a local authority as covenantor and covenantee in connection with covenants *see titles POSITIVE COVENANTS and RESTRICTIVE COVENANTS.* *See also titles DISPOSAL AND UTILISATION OF LAND; OFFICIAL BUILDINGS; LESSEE, LOCAL AUTHORITY AS; and MORTGAGES.*

**Preliminary.**—“Corporate Land” is defined in the L.G.A., 1933 (*a*), as meaning land belonging to, or held in trust for, or to be acquired by or held in trust for, a municipal corpns. otherwise than for an express statutory purpose. The present title is restricted to corporate land in this strict sense. It is apparent that the provisions of the Act of 1933 relating to corporate land do not extend to land held by county councils, district councils or parish councils, but cover only land held by municipal corpsns. Corporate land includes corporate estates and other land acquired under powers contained in municipal charters. Such land may also have been acquired under sect. 107 of the Municipal Corpsns. Act, 1882 (*b*), which section is now repealed by the L.G.A., 1933, and replaced by sect. 171 (*c*) of that Act, which provides that, where a municipal corpns. have no power under their charter to acquire land or where the power under the charter is exhausted, the council of the borough may *by agreement* acquire land (*d*) as corporate land on terms and conditions approved by the Minister of Health (*e*).

Reference must be made also to the wide power of accepting gifts of property (which would include land) for the benefit of the inhabitants of the area or any part thereof which was contained in the repealed sect. 8 (1) (*h*) of the L.G.A., 1894 (*f*). This power was limited to parish councils but, under sect. 33 of the same statute (*g*), might be

(*a*) S. 305; 26 Statutes 466.

(*b*) 10 Statutes 608.

(*c*) 26 Statutes 400.

(*d*) “Land,” unless the contrary intention appears, includes houses and buildings —Interpretation Act, 1889, s. 3; 18 Statutes 993. The definition of “land” in L.G.A., 1933, s. 305 (26 Statutes 466), includes any interest in land and easement or right in, to or over land.

(*e*) This would appear to relate to the acquisition of lands in fee simple or for long terms, and the implied prohibition against going outside the section does not apply in practice to short leases. See *Truro Corpns. v. Rowe*, [1901] 2 K. B. at p. 875; affirmed on appeal, [1902] 2 K. B. 709, C. A.; 13 Digest 371, 1027, decided under Municipal Corpsns. Act, 1882, s. 107. And see title ACQUISITION OF LAND.

(*f*) 10 Statutes 780.

(*g*) *Ibid.*, 798.

conferred by order of the Minister of Health upon the council of a borough or urban district. As from June 1, 1934, it has been provided by the L.G.A., 1933, sect. 268 (*h*), that any local authority, *i.e.* the council of any county, borough, district or parish (*i*) may, subject to limitations as to ecclesiastical and eleemosynary charities, accept, hold and administer any gift of land for the benefit of the inhabitants of the area, or any part of it (*k*) ; and as from that date the provisions of sect. 8 (1) (*h*) of the Act of 1894 are repealed (*l*). [200]

**Leasing and Letting.**—The passing of the Municipal Corpsns. Act, 1835, put an end to the power of a municipal corpn. to dispose of its corporate land much as it pleased, and the land, becoming trust property in its hands, can now only be dealt with as authorised by statute (*m*).

But special powers as to leasing corporate land were given by the Municipal Corpsns. Act, 1835, and repeated on the repeal of that Act, in sect. 108 of the Municipal Corpsns. Act, 1882 (*n*). These powers are now contained in sect. 172 of the L.G.A., 1933 (*o*), under which the council of a borough may let such land for terms not exceeding, for a building lease, 99 years ; for a mining lease, 60 years ; and for any other lease, 21 years.

The term "building lease" means a lease for any building purposes, *i.e.* for erecting, improving, adding to or repairing buildings or purposes connected therewith (*p*). The term "mining lease" means a lease for any mining purposes (*i.e.* sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals in or under land, and the erection of buildings and the execution of engineering and other works suitable for these purposes), or purposes connected with mining purposes, and includes a grant or licence for any mining purposes (*p*).

Further, with the consent of the Minister of Health, the council of a borough if they desire to lease the land in a manner other than those above mentioned may demise or lease corporate land in such manner and on such terms and subject to such conditions, including conditions as to the investment of capital money arising from the transaction, as the Minister may approve (*q*). Such approval must cover all the terms and conditions of the demise or lease (*r*). A new lease granted by a municipal corpn. in consideration of the surrender of an old lease and without the sanction of the Minister of Health may be void (*s*).

(*h*) 26 Statutes 449.

(*i*) L.G.A., 1933, s. 305; *ibid.*, 465.

(*k*) *Semblé* gifts of land accepted formerly by a borough council under the applied s. 8 (1) (*h*) of the L.G.A., 1894, or in future by a borough council under the L.G.A., 1933, s. 268, may, if not given for a purpose which is a statutory purpose, come within the definition of corporate land. See the title GIFTS OF LAND AND OTHER PROPERTY.

(*l*) L.G.A., 1933, s. 307, Sched. XI., Pt. IV.; 26 Statutes 469, 528.

(*m*) See *Davis v. Leicester Corpn.*, [1894] 2 Ch., at pp. 223, 228; 33 Digest 52, 314; and cases cited in Arnold's Law of Municipal Corpsns., 6th ed., p. 101, notes to s. 139, Municipal Corpsns. Act, 1882.

(*n*) 10 Statutes 608.

(*o*) 26 Statutes 400. The L.G.A., 1933, by s. 307 and Sched. XI., Pt. II., repeals the former powers in s. 108 of the Municipal Corpsns. Act, 1882, which were limited to ordinary leases for 31 years and building leases for 75 years.

(*p*) L.G.A., 1933, s. 172 (4); 26 Statutes 401.

(*q*) *Ibid.*, s. 172 (3), replacing Municipal Corpsns. Act, 1882, s. 109; 10 Statutes 609.

(*r*) *Davis v. Leicester Corpn.*, *supra*.

(*s*) See discussion in *Canterbury Corpn. v. Cooper* (1909), 73 J. P. 225; 33 Digest 54, 324.

Leases of corporate land may be made for the purpose of working-men's dwellings under sect. 111 of the Municipal Corpsns. Act, 1882 (*i*), and for other special purposes (*u*). [201]

Where the body corporate of a borough was on June 5, 1835, bound or engaged by agreement or warranted by ancient usage or practice at a fine certain or under special or specific terms, to make renewals of leases for years, or for life or lives or known or accustomed periods, or ordinarily made renewal of such leases on the payment of an arbitrary fine, power was given by sect. 95 of the Municipal Corpsns. Act, 1835, repealed and continued by sect. 110 of the Municipal Corpsns. Act, 1882 (*a*), to renew such leases. That section is now repealed by the L.G.A., 1933 (*b*), but the power referred to is continued in sect. 172 (2) of that Act (*c*), which provides that where a municipal corpn. had power immediately before June 1, 1934, to renew any lease of corporate land for any term or number of years, either certain or determinable after a death, or at any rent, or on the payment of any fine or premium either certain or arbitrary, or with or without any covenant for the future renewal thereof, the council of the borough may renew the lease for that term or in that manner; it has been held that such a provision is an enabling clause and must be construed liberally, being meant to empower a corpn. to do what is morally just to its lessees (*d*). The L.G.A., 1933, also specifically (*e*) leaves unaffected any power to lease corporate land in pursuance of an agreement made on or before June 5, 1835, or of a resolution entered in the books of a body corporate on or before that date. A case of an effectual covenant for perpetual renewal, on payment of a fine is dealt with in *Wynn v. Conway Corpn.*, [1914] 2 Ch. 705 (*f*).

The powers of letting and renewal of leases in the L.G.A., 1933, do not authorise any disposal of land in breach of any trust, covenant or agreement binding on a local authority (*g*) or the leasing of ancient monuments (*h*).

The general power of letting "any land" in the possession of a local authority, contained in sect. 164 of the L.G.A., 1933 (*i*), does not apply, apparently, to corporate land, as for any letting beyond a term of 7 years the sanction of the Minister of Health is required as compared with a term of 21 years under sect. 172 of the Act for leases not being building leases or mining leases. [202]

**Rents and Profits.**—The rents and profits of corporate land must be carried to the general rate fund of the borough and all liabilities falling to be discharged by the council must be discharged from that fund (*k*). It follows that the gross rents received should be accounted

(*i*) 10 Statutes 610.

(*u*) See the power of leasing land for military purposes under the Military Lands Act, 1892, s. 11 (1); 17 Statutes 580, and the title DISPOSAL AND UTILISATION OF LAND.

(*a*) 10 Statutes 609.

(*b*) L.G.A., 1933, s. 307 and Sched. XI., Pt. II.; 26 Statutes 469, 517.

(*c*) 26 Statutes 401.

(*d*) A.R.G. v. Great Yarmouth Corpn. (1855), 21 Beav. 625; 33 Digest 53, 321.

See also that case as to the terms of the renewal.

(*e*) S. 179 (e); 26 Statutes 404.

(*f*) 31 Digest 81, 2261.

(*g*) L.G.A., 1933, s. 179 (d); 26 Statutes 404.

(*h*) *Ibid.*, s. 179 (b).

(*i*) 26 Statutes 397.

(*k*) L.G.A., 1933, s. 185 (1); 26 Statutes 407. As to sale of shingle, see opinion, Association of Municipal Corpsns., Monthly Circular, Vol. 50 (1928), p. 41, to the effect that this is not a sale of land and proceeds are rents and profits to be carried to the general rate fund.

for to the general rate fund from which fund the cost of repairs and other outgoings should be defrayed.

Attention has already been called (*l*) to the fact that a municipal corpn. are, in dealing with corporate lands, in the position of trustees of the property. [203]

**Sale, Exchange or Other Disposal.**—Under sect. 172 (3) of the L.G.A., 1933 (*m*), corporate land, *i.e.* land belonging to or held in trust for a municipal corpn. otherwise than for an express statutory purpose (*n*) may be disposed of by way of sale, exchange, mortgage, charge or otherwise in such manner and on such terms and subject to such conditions, including such conditions as to the investment of capital money arising from the transaction, as the Minister of Health may approve. It would appear that, apart from this power, which formerly appeared in a narrower form in sects. 108 (1) and 109 of the Municipal Corpsns. Act, 1882 (*o*), or a power in a local Act or other statute, a municipal corpn. could not sell their corporate land (*p*).

Under sect. 109 of the Municipal Corpsns. Act, 1882, it was decided that the approval of the Minister of Health must be given not only to the conveyance of the land, but also to any restrictive covenants binding upon the corpn. (*q*). The disposal may be made in consideration of a perpetual rent charge (*r*).

Sect. 111 of the Municipal Corpsns. Act, 1882 (*s*), allows grants of corporate land to be made, as well as leases, for sites for working-men's dwellings if the approval of the Minister of Health is obtained. Other enactments allowing grants to be made by municipal corpsns. of land for various purposes do not as a rule mention corporate land, but refer to land held for the public uses or purposes of the borough (*t*), or to land held for public, ecclesiastical, parochial, charitable or other purposes or objects (*u*). Sect. 3 of the Recreation Grounds Act, 1859 (*a*), enabling land to be granted to trustees for a recreation ground extends to "lands belonging to a municipal corpn." In the two cases last mentioned the consent of the Treasury is necessary. [204]

Should any doubt be entertained whether any particular enactment allows a grant or lease of corporate land to be made, it would be advisable, in addition to following the procedure prescribed by the enactment, to apply to the M. of H. for a consent under sect. 172 (3) of the L.G.A., 1933 (*b*).

Apparently the general power of appropriating land under sect. 163 of the L.G.A., 1933, dealt with under the title APPROPRIATION OF LAND, at p. 353 of Vol. I., extends only to land not required for

(*l*) *Ante*, p. 79; and see *Davis v. Leicester Corpn.*, [1894] 2 Ch., at p. 231; 33 Digest 52, 314.

(*m*) 26 Statutes 401.

(*n*) See *ante*, p. 78.

(*o*) 10 Statutes 608, 609.

(*p*) See *Tepper v. Nichols* (1865), 34 L. J. (C. P.) 61.

(*q*) *Davis v. Leicester Corpn.*, *supra*. As to the effect of a provision in a local Act requiring the consent of M. of H., see *Re Plymouth Corpn. and Walter*, [1918] 2 Ch. 354, 33 Digest 52, 312.

(*r*) *Scarborough Corpn. v. Cooper*, [1910] 1 Ch. 68; 33 Digest 52, 313.

(*s*) 10 Statutes 610.

(*t*) See, *e.g.*, s. 10 of the Military Forces Localization Act, 1872; 17 Statutes 568; and see title DISPOSAL AND UTILISATION OF LAND.

(*u*) See the Places of Worship Sites Amendment Act, 1882, s. 1; 6 Statutes 1241.

(*a*) 12 Statutes 369.

(*b*) 26 Statutes 401.

the purposes for which it was acquired, and does not cover corporate land, as this position could not well arise. Moreover, nothing in Part VII. of the Act of 1933 is to authorise the disposal of land by a local authority, whether by sale, lease or exchange, in breach of any trust binding upon the authority (c), and although this saving does not extend to an appropriation of land, it suggests that an appropriation involving a departure from the trust on which corporate land is held would not be admissible.

The powers to dispose of corporate land, given by sect. 172 of the L.G.A., 1933, do not authorise the council of a borough to dispose of any ancient monument within the meaning of the Ancient Monuments Acts, 1913 and 1931 (d), or of any land in breach of any trust, covenant or agreement binding upon them (e). [205]

**London.**—The provisions of the L.G.A., 1933, referred to above do not apply to London, nor does the Municipal Corpsn. Act, 1882, since neither the metropolitan borough councils nor the City corpn. are “municipal corpsn.” within the meaning of that Act. The powers of the metropolitan borough councils are dealt with in the London Government Act, 1899 (f); see title METROPOLITAN BOROUGH. As to the City corpn., see title CITY OF LONDON. [206]

(c) L.G.A., 1933, s. 179 (b); 26 Statutes 403.

(d) S. 179 (b) of the L.G.A., 1933, refers to the Ancient Monuments Act, 1930, but as there is no such enactment the reference is presumed to be to the Act of 1931.

(e) L.G.A., 1933, s. 179 (b) and (d).

(f) 11 Statutes 1225.

## CORPORATE OFFICE

*See ACCEPTANCE OF OFFICE.*

## CORPORATE STOCK

*See STOCK.*

## CORPORATION

*See MUNICIPAL CORPORATION; COMMON LAW CORPORATION.*

## CORPSES

|                             | PAGE |  | PAGE |
|-----------------------------|------|--|------|
| CUSTODY OF CORPSES -        | 83   | BODIES OF PERSONS DYING OF<br>INFECTIOUS DISEASE, ETC. - | 85   |
| BODIES OF DROWNED PERSONS - | 84   | NUISANCE -   | 87   |
| POOR PERSONS - - -          | 85   | LONDON - - -   | 87   |

*See also titles :*

BURIAL AND CREMATION ;  
CEMETERIES ;  
CORONERS ;

INFECTIOUS DISEASES ;  
MORTUARIES ;  
POST-MORTEM EXAMINATIONS.

**Custody of Corpses.**—A dead body cannot be the subject of ownership (*a*) and therefore cannot be stolen (*b*), nor can any person have a lien thereon. Where a gaoler asserted a lien on the body of a deceased prisoner in respect of claims against him, a *mandamus* issued commanding that the body should be delivered to the executors (*c*), and in another case in similar circumstances it was said that such action on the part of a gaoler rendered him guilty of misconduct in his public character for which he was liable to prosecution (*d*).

The executors of a deceased person have a right to the custody of the corpse until burial (*e*), and, having such custody, it is their duty to bury the testator's corpse in manner befitting his station while alive (*f*), and they are entitled to reasonable expenses so incurred (*g*). The widower (*h*), widow (*i*), parent (*k*) of the deceased, or a child not being a minor (*l*), or the householder of a house in which a person dies (*m*) has also a duty, if he or she has the means, to bury the body.

The rights of the executors to possession of a dead body cannot be abrogated by testamentary disposition or directions given during life, except by a direction given under sect. 11 of the Anatomy Act, 1832 (*n*), under which a person may give directions for the anatomical examination of his body after death.

An executor or other party having the lawful custody of a body may permit the same to undergo anatomical examination, subject to

- (a) *R. v. Sharpe* (1857), 26 L. J. (M. C.) 47 ; 7 Digest 521, 7.
- (b) *R. v. Haynes* (1614), 12 Co. Rep. 113 ; 15 Digest 904, 9925.
- (c) *R. v. Fox* (1841), 2 Q. B. 246 ; 7 Digest 521, 5.
- (d) *R. v. Scott* (1842), 2 Q. B. 248, n., *per MAULE, J.* ; 7 Digest 521, 6.
- (e) *Williams v. Williams* (1882), 20 Ch. D. 659 ; 7 Digest 521, 8.
- (f) *Rogers v. Price* (1829), 3 Y. & J. 28 ; 7 Digest 522, 15. As to funeral expenses, see 7 Digest, pp. 522—526.
- (g) *Edwards v. Edwards* (1834), 2 Cr. & M. 612 ; 7 Digest 525, 53 ; *Sharp v. Lush* (1879), 10 Ch. D. 468 ; 7 Digest 522, 16. As to persons executed by process of law, see Capital Punishment Amendment Act, 1868, s. 6 ; 4 Statutes 643.
- (h) *Ambrose v. Kerrison* (1851), 10 C. B. 776 ; 7 Digest 524, 38 ; *Jenkins v. Tucker* (1788), 1 Hy. Bl. 90 ; 7 Digest 524, 39.
- (i) *Bradshaw v. Beard* (1862), 12 C. B. (n. s.) 344 ; 7 Digest 524, 41 ; *Chapple v. Cooper* (1844), 13 L. J. (Ex.) 286 ; 7 Digest 524, 42 (infant widow).
- (k) *R. v. Vann* (1851), 21 L. J. (M. C.) 39 ; 7 Digest 522, 14 ; *Clark v. London General Omnibus Co.*, [1906] 2 K. B. 648 ; 7 Digest 525, 47, *per Lord ALVERSTONE, C.J.*, at p. 649 ; but note the doubt expressed by FARWELL, L.J., at p. 663.
- (l) *Chapple v. Cooper, supra.*
- (m) *R. v. Stewart* (1840), 10 L. J. (M. C.) 40 ; 7 Digest 522, 10.
- (n) 11 Statutes 660. For a form of direction as to ascertainment of cause of testator's death, see 15 Ency. Forms, p. 557.

compliance with the provisions of the Anatomy Act, 1832, so long as he is not an undertaker or other person entrusted with the body for the purpose only of interment (*o*). A body may not, however, be submitted to dissection if during life, to the knowledge of the executor or of the party having custody of the body, the person expressed a desire at any time in writing, or orally during his last illness to two persons or more, that his body should not be dissected ; or if the surviving husband or wife, or any known relative, requires that the body shall be interred without an anatomical examination (*p*).

The master of a workhouse is a party having the lawful custody of the body of a poor person dying in the workhouse, within the meaning of sect. 7 of the Anatomy Act, 1832, *supra* (*q*), and no officer concerned with the relief of the poor may receive any money for the burial of any poor person, or act as undertaker for reward, or receive any money from any dissecting school or school of anatomy or hospital or from any person to whom such body may be delivered, or derive any personal emolument whatsoever from the burial or disposal of any such body (*r*). The penalty for a contravention of this section is a fine not exceeding £5, recoverable on summary conviction.

As to removal of bodies for post-mortem examination ordered by a coroner, see title POST-MORTEM EXAMINATIONS. [207]

**Bodies of Drowned Persons.**—Where a dead human body is cast on shore from the sea by wreck or otherwise, or is cast on shore from any tidal or navigable waters or is found floating or sunken in any such waters and brought on to the shore or bank thereof, it is the duty of any police constable acting within the parish (*s*), on notice being given to him, to cause the body to be removed to some convenient place and with all convenient speed to cause such body to be decently interred in the churchyard or burial ground of the parish (*a*). Under s. 6 of the Act of 1808, the county treasurer must repay the expenses of removal and burial upon the receipt of a justice's order directing him to repay a specified sum. The order should indicate that in the opinion of the justice the expenses included in it are reasonable and necessary and are such as to be repayable under the Act (*b*).

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(*o*) As to the burial of persons executed, see Offences against the Person Act, 1861, s. 3 ; 4 Statutes 601, and Capital Punishment Amendment Act, 1868, s. 6 ; 4 Statutes 643.

(*p*) Anatomy Act, 1832, s. 7 ; 11 Statutes 659. As to restrictions on removal of bodies for dissection and the licensing of persons to receive bodies, see ss. 9, 10 ; 11 Statutes 660 ; as to subsequent interment of body, see s. 13 ; 11 Statutes 661 ; Anatomy Act, 1871, s. 2 ; 11 Statutes 694 ; S.R. & O. Rev., 1904, I., Anatomy, p. 1. The powers and duties of the Home Secretary under the Anatomy Acts were transferred to the M. of H. by the M. of H. (Anatomy Acts, Transfer of Powers) Order, 1920 ; S.R. & O., 1920, No. 808.

(*q*) *R. v. Feist* (1858), 27 L. J. (M. C.) 164 ; 7 Digest 521, 3, where the master of a workhouse who was the person having lawful custody of a body, arranged for a mock funeral in order to lead the relatives to suppose that the body was buried without dissection, and so prevented them from making a requisition for interment without anatomical examination ; but a conviction for disposing of the body for the purpose of dissection was held to be wrong as no statutory requirement under the Anatomy Act, 1832, had in fact been made by the relatives.

(*r*) Poor Law Act, 1930, s. 78 ; 12 Statutes 1006.

(*s*) Overseers Order, 1927, s. 5 (1) and Schedule ; S.R. & O., 1927, No. 55 ; 14 Statutes 772, 777.

(*a*) Burial of Drowned Persons Acts, 1808 and 1886 ; 2 Statutes 273, 279. The Act of 1886 was passed as a result of the decision in *Woolwich Overseers v. Robertson* (1881), 6 Q. B. D. 654 ; 7 Digest 559, 350, where it was held that the Act of 1808 did not apply to bodies cast ashore in navigable rivers.

(*b*) *R. v. Kent County Treasurer* (1889), 22 Q. B. D. 603 ; 7 Digest 559, 349.

If the parish is in a county borough, it seems probable that ss. 34 and 67 of the L.G.A., 1888 (*c*), allow a similar order to be made on the county borough treasurer, although the point is not a clear one.

It is the duty of any person finding such a body to give notice of the finding, and a reward of 5s. is payable under s. 3 to the person who first gives notice. Neglect to give notice within 6 hours of the finding renders the finder liable to a forfeiture of £5 (*d*). [208]

**Poor Persons.**—If a person whose duty it is to bury a corpse is too poor to do so, it may be buried by the public assistance authority of the county or county borough within which the body is lying, and it is their duty to do so if the body is lying in their workhouse or on premises belonging to them (*e*). They are authorised to pay the cost of such burial, and the cost of the burial of any poor person dying outside their area who was at the time of his death in receipt of relief from them (*f*).

If a person has not the means to defray the expenses of a burial for which he is responsible, so that the body remains unburied and becomes a nuisance to the neighbourhood, he is nevertheless not indictable for a nuisance, notwithstanding the fact that he might have obtained the money on loan from the public assistance authority, for he is not bound to incur a debt (*g*). [209]

**Bodies of Persons Dying of Infectious Disease, etc. (*h*).**—Where the body of a person who has died of an infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, then, if the borough or district council have provided a mortuary (*i*), any justice may on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the council, to the mortuary, and direct the same to be buried within a time limited in the order (*j*).

If such an order is made, then, unless the friends or relations of the deceased undertake to bury the body and do so within the time limited by the order, it becomes the duty of the relieving officer to effect burial at the expense of the general rate, but the expense so incurred may be recovered in a summary manner from any person legally liable to pay the same (*k*).

Obstruction of the execution of the justice's order renders the offender liable to a penalty not exceeding £5.

The above provisions of the P.H.A., 1875, with regard to the removal and burial of corpses, are practically superseded by sects. 8—10 of the Infectious Disease (Prevention) Act, 1890 (*l*), where these sections have been adopted by the council of the borough or district (*m*). The M. of H. may also by order assign to any port sanitary authority any functions under the Act of 1890, with the necessary modifications (*n*).

(*c*) 10 Statutes 711, 740.

(*d*) Act of 1808, s. 4; Act of 1886, s. 1; 2 Statutes 274, 279.

(*e*) *R. v. Stewart* (1840), 10 L. J. (M. C.) 40; 7 Digest 522, 13.

(*f*) Poor Law Act, 1930, s. 75; 12 Statutes 1005.

(*g*) *R. v. Varn* (1851), 21 L. J. (M. C.) 39; 7 Digest 522, 14.

(*h*) See also title "Infectious Diseases."

(*i*) As to provision of mortuaries, see P.H.A., 1875, s. 141; 13 Statutes 682.

(*j*) For form of certificate and order, see 10 Encl. Forms, pp. 406, 407.

(*k*) P.H.A., 1875, s. 142; 13 Statutes 682.

(*l*) 13 Statutes 820, 821.

(*m*) S. 3; 13 Statutes 817.

(*n*) P.H. (Ports) Act, 1896; 13 Statutes 873.

Sect. 8 of the Act of 1890 provides that the body of a person who has died of any infectious disease (o) may not, without the sanction of the M.O.H. or of a registered medical practitioner, be retained unburied for more than forty-eight hours, elsewhere than in a public mortuary or in a room not used at the time as a dwelling place, sleeping place or workroom. [210]

If a body so remains unburied, without sanction, for more than forty-eight hours, or if a dead body of a person is retained in any house or building (whether the person has died of an infectious disease or not) so as to endanger the health of the inmates of such house or building or any adjoining or neighbouring house or building, sect. 10 of the Act (p) allows a justice, on the application of the M.O.H. to order the body to be removed at the cost of the council to any available mortuary (q), and to direct the same to be buried within a time to be limited in the order, or the justice may direct the body to be buried without removal to a mortuary. If after such an order is made, the friends or relatives of the deceased do not undertake to bury the body within the time limited by the order, it becomes the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or if not so removed, of the district in which the body is lying, to bury the body, and he may charge the expense of burial in his accounts. The public assistance authority may recover the expense in a summary manner from any person legally liable to pay the same (r).

If a medical officer or registered medical practitioner should certify under sect. 9 of the Act (s), in the case of a person dying of infectious disease in any hospital or place of temporary accommodation for the sick, that it is desirable in order to prevent the spread of infection, that the body should not be removed except for the purpose of burial, the body may only be removed for transfer to a burial ground for immediate burial, unless it is first removed to a mortuary, which for the purpose of this provision is to be deemed to be a part of the hospital. An offence against sect. 9 renders the offender liable to a penalty not exceeding £10. [211]

The M. of H. has power to make, and from time to time alter and revoke, regulations for the speedy interment of the dead if any part of England and Wales appears to be threatened with or affected by any formidable epidemic, endemic or infectious disease (t). Any one in charge of premises in which there is the body of a person who has died from a dangerous infectious disease (u) must take steps to prevent persons unnecessarily coming so near to it as would involve risk of infection (v). For failure to do so there is a penalty not exceeding £5 (w).

In a borough or district in which sect. 68 of the P.H.A. Amt. Act, 1907 (x), has been put in force by order of the M. of H., it is not lawful

(o) As to the meaning of "infectious disease," see s. 2; 13 Statutes 816.

(p) 13 Statutes 821.

(q) This provision is not limited, as in the case of orders under s. 142 of the P.H.A., 1875, to areas in which the council have themselves provided a mortuary.

(r) S. 10; 13 Statutes 821.

(s) 13 Statutes 820.

(t) P.H.A., 1875, s. 134; 13 Statutes 680.

(u) I.e., any infectious disease named in s. 6 of the Infectious Disease (Notification) Act, 1889 (13 Statutes 813), or so declared by an order of the M. of H. (s. 60 of the P.H.A., 1925; 13 Statutes 1141).

(v) *Kitchen v. Douglas* (1915), 80 J. P. 47; 38 Digest 201, 365.

(w) S. 57 of the P.H.A., 1925; 13 Statutes 1140.

(x) 13 Statutes 936.

to hold a wake over the body of a person who has died of an infectious disease, and the occupier of a house, or part of a house, who suffers such a wake to take place, and every person attending to take part in such a wake is liable to a penalty not exceeding 40s.

As to the hiring of public conveyances other than hearses, for the conveyance of bodies of persons who have died from an infectious disease, see s. 11 of the Infectious Disease (Prevention) Act, 1890 (*a*). [212]

**Nuisance.**—It is a nuisance at common law to expose a dead body in a public highway (*b*). It is also a nuisance to retain unburied a corpse until decomposition sets in and thereby endanger the health and cause offence to other persons, though on an indictment alleging that by reason of the decomposition of a corpse there was great damage and common nuisance to persons inhabiting the house where the body was lying, it was held that as the counts did not allege a nuisance to the public, but only a private nuisance, they were bad (*c*). [213]

**London.**—The provisions of the P.H.A., 1875, and the Infectious Disease (Prevention) Act, 1890, referred to above, as to bodies of persons dying of infectious diseases, etc., do not apply to London, but similar provisions are contained in the P.H. (London) Act, 1891, sects. 72—74, 89 (*d*). The local authority for the purposes of those provisions, described therein as the sanitary authority, is, in the City of London, the Common Council, and elsewhere in the administrative County of London, the metropolitan borough council.

By sect. 25 of the L.C.C. (General Powers) Act, 1928 (*e*), every person who has charge of any premises in which is the body of a person who has died from any infectious disease which is notifiable under sect. 55 of the P.H. (London) Act, 1891 (see title INFECTIOUS DISEASES), must take all reasonable steps to prevent persons coming into such proximity with the body unnecessarily as to involve risk of infection (*f*). The penalty for default is a fine not exceeding £5 (*g*).

Every metropolitan sanitary authority is bound to provide a mortuary, and may provide for the decent and economical burial, at a charge to be fixed by bye-law, of any dead body which may be received into a mortuary (*h*). The L.C.C. may under sect. 93 of the P.H. (London) Act, 1891 (*i*), provide one or two suitable buildings to which dead bodies found in London and not identified may, on the order of a coroner, be removed, and in which such bodies may be retained with a view to identification, but this power has not been exercised by the council. [214]

(*a*) 13 Statutes 821.

(*b*) *R. v. Clark* (1883), 15 Cox, C. C. 171; 15 Digest 747, 8066.

(*c*) *R. v. Byers* (1907), 71 J. P. 205; 7 Digest 522, 12.

(*d*) 11 Statutes 1069, 1074.

(*e*) *Ibid.*, 1408.

(*f*) *Kitchen v. Douglas* (1915), 80 J. P. 47; 38 Digest 201, 365.

(*g*) 11 Statutes 1408.

(*h*) P.H. (London) Act, 1891, s. 88; 11 Statutes 1074.

(*i*) 11 Statutes 1075.

# CORRUPT AND ILLEGAL PRACTICES

|  | PAGE |   | PAGE |
|--|------|---|------|
| I. GENERAL - - - - -                                     | 88   | IV. ADAPTATIONS TO ELECTIONS<br>OF DISTRICT AND PARISH<br>COUNCILLORS - - - - - | 92   |
| II. CORRUPT PRACTICES - - - - -                          | 89   | V. EXPENSES OF CANDIDATES AT<br>ELECTIONS - - - - -                             | 93   |
| Bribery - - - - -  | 89   | Municipal Elections - - - - -   | 93   |
| Treating - - - - -                                       | 89   | County Councils - - - - -   | 93   |
| Undue Influence - - - - -                                | 90   | District and Parish Coun-<br>cillors - - - - -                                  | 93   |
| Personation - - - - -                                    | 90   | Return of Expenses - - - - -  | 94   |
| False Declaration as to Elec-<br>tion Expenses - - - - - | 90   | Payments by Candidates - - - - -  | 94   |
| Punishment - - - - -                                     | 90   | What may be paid for - - - - -  | 95   |
| III. ILLEGAL PRACTICES - - - - -                         | 90   | What may not be paid for - - - - -  | 95   |
| Invalidation of Election - - - - -                       | 90   | VI. RELIEF FROM BREACHES OF<br>THE LAW - - - - -                                | 95   |
| Election Expenses - - - - -                              | 91   | Corrupt Practices - - - - -   | 95   |
| Publication of False State-<br>ments - - - - -           | 91   | Illegal Practices - - - - -   | 95   |
| Illegal Payment, Employ-<br>ment and Hiring - - - - -    | 91   | In Relation to Return of<br>Expenses - - - - -                                  | 95   |
| Prevalence of Illegal Prac-<br>tices, etc. - - - - -     | 92   | Other Illegal Practices - - - - -   | 96   |
| Amendment of Charge - - - - -                            | 92   | VII. LONDON - - - - -   | 96   |

*See also titles : ELECTION PETITIONS ;  
ELECTIONS.*

FOR GENERAL LAW RELATING TO ELECTIONS, CORRUPT AND ILLEGAL PRACTICES,  
ETC., See HALSBURY'S LAWS OF ENGLAND (2ND ED.), VOL. 12, TITLE "ELEC-  
TIONS."

## I. GENERAL

Corrupt and illegal practices at local elections are dealt with by sect. 25 of the Ballot Act, 1872 (*a*), the Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 and 1911 (*b*). Sect. 35 of the Representation of the People Act, 1918 (*c*), made permanent the foregoing statutes.

It will be convenient to refer in this title to the above-mentioned Acts of 1884 and 1911 as the Act of 1884 and the Act of 1911.

Part IV. of the Municipal Corporns. Act, 1882 (*d*), which was amended by the Act of 1884, deals with corrupt practices at any municipal election, that is to say, at any election to the office of mayor, alderman or elective borough auditor, as well as that of councillor of a borough (*e*). Similarly, Part IV. of the Act of 1882, as so amended, is applied to the election of county councillors, county aldermen and the chairman of a county council by sect. 75 of the L.G.A., 1888 (*f*).

As the amending Act of 1911 (*g*) is by sect. 2 to be construed as

(*a*) 7 Statutes 435.

(*b*) *Ibid.*, 511, 546.

(*c*) *Ibid.*, 568.

(*d*) 10 Statutes 598.

(*e*) See the definitions of "municipal elections" and "corporate office" in s. 7 of the Municipal Corporns. Act, 1882; 10 Statutes 577.

(*f*) 10 Statutes 746.

(*g*) 7 Statutes 546.

one with the Act of 1884, the amending Act applies to any election to which the Act of 1884 has been applied.

Part IV. of the Municipal Corporations Act, 1882, and the Acts of 1884 and 1911, also extend to elections of district councillors and parish councillors by virtue of sects. 40 (2) and 54 (2) of the L.G.A., 1933 (*h*), subject to such adaptations, alterations and exceptions as may be made by the rules of the Home Secretary relating to these elections (*i*).

The offence of personation, at any election under the L.G.A., 1933, at which ballot papers are used, is dealt with in sect. 82 of that Act (*k*).

A corrupt practice may be distinguished from an illegal practice in that there can be no corrupt practice unless a corrupt intention is present (*l*). An illegal practice, however, is committed by doing a prohibited act, however good the motive or honest the intention may be.

The election of any candidate may be avoided if that candidate, by himself or his agent, has been guilty of any corrupt or illegal practice (*m*), or by such general corruption, bribery, treating or intimidation at the election as would, by the common law of Parliament, avoid a Parliamentary election (*n*), or by extensive illegal practices (*o*).

**[215]**

## II. CORRUPT PRACTICES

**Bribery.**—This offence is defined in Part I. of the Third Schedule to the Act of 1884 (*p*).

It is bribery before, during or after an election to make any gift, loan, offer or promise of money or money's worth, or offer or promise of any office, place or employment to any voter or other person, with the intention of inducing the voter either to vote or to abstain from voting, or because he has voted or abstained from voting. The offence is complete where the bribe is offered and accepted, and the voter promises to vote in pursuance of the corrupt contract, although he may break his promise, or may never have intended to perform it. Where the bribe is offered, but not accepted, the offence is still bribery (*q*). **[216]**

**Treating.**—It is treating, before, after or during an election, corruptly to provide or pay for any meat, drink or entertainment for any person with the intention of corruptly influencing a voter either to vote or to abstain from voting, or on account of his having voted or abstained from voting. The treater and the person treated are equally guilty and it is of no consequence whether the candidate treating is elected or not (*r*). Treating, to constitute an offence, must be corrupt; mere hospitality is not treating. In each case it is a question of intention which must depend upon the facts. **[217]**

(*h*) 26 Statutes 325, 332.

(*i*) As to these, see *post*, p. 92.

(*k*) 26 Statutes 350.

(*l*) *Barrow-in-Furness Petition* (1886), 4 O'M. & H. 76; 20 Digest 50, 326.

(*m*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 3, 8; 7 Statutes 512, 514.

(*n*) Municipal Corporations Act, 1882, s. 81; 10 Statutes 599.

(*o*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 18; 7 Statutes 517.

(*p*) 7 Statutes 531.

(*q*) *Harding v. Stokes* (1837), 2 M. & W. 233; 20 Digest 129, 1030.

(*r*) *Turnbull v. Welland* (1871), 24 L. T. 730; 20 Digest 129, 1033.

**Undue Influence** is the direct or indirect use or threat of force or restraint, or the infliction or threat of injury or damage, with the intention of compelling a voter either to vote or to abstain from voting, or on account of the voter having voted or abstained from voting. **[218]**

**Personation.**—The offence of personation, as respects local elections, is now governed by sect. 82 of the L.G.A., 1933 (*s*), and is committed where any person applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person ; or where a person having voted once at an election applies at the same election for a ballot paper in his own name. It is the duty of the returning officer to institute proceedings against any person whom he may have reasonable cause to believe to have been guilty of the offence at the election for which he is returning officer. It is also enacted that no person shall be convicted or committed for trial for this offence except upon the evidence of not less than two credible witnesses (*t*).

Aiding, abetting, counselling and procuring the offence of personation is a corrupt practice. **[219]**

**False Declaration as to Election Expenses.**—This consists in making falsely the declaration required to be made when the return of election expenses is sent in ; see *post*, p. 94. **[220]**

**Punishment.**—A corrupt practice at a local election is an indictable misdemeanor, and any person convicted on indictment of a corrupt practice (other than personation) is liable to be imprisoned for one year with or without hard labour or to be fined any sum not exceeding £200 (*a*). On conviction summarily by an election court the imprisonment cannot exceed six months, but the fine limit remains the same (*b*). For the offence of personation, on conviction on indictment, the punishment is imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £20, or to both such imprisonment and fine (*c*). Any person making a false declaration as to election expenses may also be punished as for perjury (*d*). **[221]**

### III. ILLEGAL PRACTICES

**Invalidation of Election.**—Those illegal practices which may invalidate an election may be divided into three groups consisting of those which invalidate the election if committed (1) by the candidate or any of his agents, (2) by the candidate alone, and (3) by any person whatever.

The first group comprises payments :

(a) for the conveyance of electors to or from the poll, whether in hiring horses or carriages, in railway fares or otherwise ;

(b) to an elector (not being an advertising agent acting in the ordinary course of his business) on account of the use of any house,

(*s*) 26 Statutes 350.

(*t*) L.G.A., 1933, s. 82 ; 26 Statutes 350.

(*a*) Corrupt and Illegal Practices Prevention Act, 1883, s. 6 ; 7 Statutes 467 ; as applied by s. 2 of the Act of 1884.

(*b*) *Ibid.*, s. 43 (4) ; 7 Statutes 491.

(*c*) *Ibid.*

(*d*) Perjury Act, 1911, s. 2 ; 4 Statutes 774.

land, building or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address, bill or notice;

(c) for any committee room in excess of the number allowed by the Act of 1884 (e).

Sect. 4 (2) of the Act of 1884 also provides that if any payment or contract for payment, is knowingly made in contravention of the section, either before, during or after an election, the person making the same shall be guilty of an illegal practice, as shall also any person receiving such payment, or being a party to any such contract, knowing the same to be in contravention of the Act. Sect. 15 of the same Act (f) protects, however, innocent creditors. [222]

The second group includes the following acts:

(d) voting when prohibited by statute, or inducing or procuring any person so to vote (g);

(e) before or during an election, knowingly publishing a false statement of the withdrawal of a candidate for the purpose of promoting or procuring the election of another candidate (g);

(f) printing, publishing or posting, or causing to be printed, published or posted a bill, placard or poster relating to an election, without the name and address of the printer and publisher on the face of it (h).

The third group comprises those acts mentioned in paras. (a) to (e) above. [223]

**Election Expenses.**—A candidate, agent of a candidate or person who acts in contravention of sect. 5 of the Act of 1884 (i), imposing a limit on election expenses, and a candidate who fails to make a return and declaration of his expenses, and any person who pays an election expense, the claim for which is sent in too late or is paid later than twenty-one days after the day of election, is guilty of an illegal practice (k). [224]

**Publication of False Statements.**—By sect. 1 of the Act of 1911 (l) a further illegal practice was created, viz. that of making or publishing any false statement of fact in relation to the personal character or conduct of a candidate for the purpose of affecting his return at the election, unless the person charged can show that he had reasonable grounds for believing and did believe, his statement to be true.

A candidate is not liable nor is his election to be avoided for any such illegal practice committed by his agent, unless it is shown that the candidate authorised or consented to the illegal practice, or paid for the circulation of the false statement, or unless an election court should report that the election of the candidate was procured or materially assisted by the false statement (m). [225]

**Illegal Payment, Employment and Hiring.**—Certain payments, employments and hirings indicated in sects. 9 to 16 of the Act of 1884 (n) are declared to constitute the offence of illegal payment, employment or hiring by sect. 17 of the Act and are punishable on summary conviction by a fine not exceeding £100. Such an offence, if committed by a candidate or with his knowledge and consent, con-

(e) Act of 1884, s. 4; 7 Statutes 512.

(f) 7 Statutes 516.

(g) Act of 1884, s. 6; *ibid.*, 514.

(h) *Ibid.*, s. 14; *ibid.*, 516.

(i) 7 Statutes 513.

(k) Act of 1884, s. 21 (1), (5); 7 Statutes 519.

(l) 7 Statutes 546.

(m) Act of 1911, s. 1 (4); 7 Statutes 516.

(n) 7 Statutes 515—517.

stitutes an illegal practice on the part of the candidate, and as such makes void his election under sect. 8 (2) of the Act of 1884.

The following are examples of illegal payments:

(1) the provision of money for any payment, prohibited by the Act of 1884, or for replacing any money so expended (*o*) ;

(2) corruptly inducing or procuring a person to withdraw from his candidature, in consideration of a payment or promise of a payment (*p*) ;

(3) payments for bands of music, torches, flags, banners, cockades, ribbons or other marks of distinction for the purpose of promoting or procuring the election of a candidate (*q*).

Illegal employment is dealt with in sect. 13 of the Act of 1884 (*r*) and consists in engaging or employing any person for payment, or promise of payment, for the purpose of promoting or procuring the election of a candidate not being such employment as is allowed by the Act.

Illegal hirings consist of:

(1) letting, lending or employing, hiring or borrowing, for the conveyance of electors to or from the poll, any public stage or hackney carriage or any animal kept or used for drawing it, or any carriage or animal kept or used for the purpose of letting for hire, unless the hiring is by an elector or several electors for conveying them to or from the poll (*s*) ;

(2) hiring or using as a committee room or for holding a meeting, any licensed premises or premises on which refreshment (whether food or drink) is ordinarily sold for consumption on the premises, or any premises where intoxicating liquor is supplied to members of a club, society or association (*t*). [226]

**Prevalence of Illegal Practices, etc.**—An election is also void where on the trial of an election petition, the election court reports that illegal practices, or offences of illegal payment, employment or hiring, have so extensively prevailed as to have affected the result of the election (*u*). [227]

**Amendment of Charge.**—Where a person other than the candidate is charged with an illegal practice, the court will not allow the amendment of the charge so as to convert it into a charge against the candidate (*a*). [228]

#### IV. ADAPTATIONS TO ELECTIONS OF DISTRICT AND PARISH COUNCILLORS

The adaptations of Part IV. of the Municipal Corporations Act, 1882, and of the Acts of 1884 and 1911 to elections of district and parish councillors are indicated in Art. 4 of the Urban District Councillors Election Rules, 1934 (*b*), Art. 5 of the Rural District Councillors Election Rules, 1934 (*c*), and Art. 7 of the Parish Councillors Election Rules, 1934 (*cc*). In addition to drafting adaptations, all three codes

(*o*) Act of 1884, s. 9 ; 7 Statutes 515.

(*p*) *Ibid.*, s. 11 ; *ibid.*

(*q*) *Ibid.*, s. 12 ; *ibid.*

(*r*) 7 Statutes 516.

(*s*) Act of 1884, s. 10 ; 7 Statutes 515.

(*t*) *Ibid.*, s. 16 ; *ibid.*, 517.

(*u*) *Ibid.*, s. 18 ; *ibid.*

(*a*) *Manchester, Eastern Division Case* (1892), 4 O.M. & H. 120 ; 20 Digest 99, 782 ; *Worcester Borough Case* (1892), 4 O.M. & H. 153 ; 20 Digest 63, 413.

(*b*) S.R. & O., 1934, No. 545.

(*c*) *Ibid.*, No. 546.

(*cc*) S.R. & O., 1934, No. 1318.

adapt sect. 13 (1) (b) of the Act of 1884 (*d*) so as to allow polling agents to be employed to the extent authorised by para. 13 of Part III. of the Second Schedule to the L.G.A., 1933, as adapted by the Election Rules, and alter sect. 25 (1) of the Act of 1884, so as to extend to six weeks the time for the presentation of an election petition complaining of an illegal practice.

By the Rural District Councillors and Parish Councillors Election Rules, sect. 16 (1) of the Act of 1884 (*e*) is altered so as not to forbid the use of premises in a rural district, in which intoxicating liquor or refreshment is supplied (*f*) for holding a meeting for promoting or procuring the election of a candidate at an election of rural district councillors or parish councillors. [229]

#### V. EXPENSES OF CANDIDATES AT ELECTIONS

**Municipal Elections.**—Expenses may be incurred by or on behalf of a candidate for the purposes of the election of an amount not exceeding £25, and if the number of electors in the borough or ward exceeds 500, an additional 2*d.* for each elector above the first 500 electors. Where there are two joint candidates, the maximum amount of expenses is reduced for each of such candidates by one-fourth, and if there are more than two joint candidates by one-third (*g*).

At the election of a mayor, alderman or elective auditor, no expense may be incurred by a candidate (*h*).

Any candidate, or agent of a candidate, who knowingly contravenes sect. 5 of the Act of 1884, is guilty of an illegal practice. [230]

**County Councils.**—The Act of 1884 is applied by sect. 75 of the L.G.A., 1888 (*i*), with adaptations. All expenses properly incurred in holding an election of county councillors are by sect. 16 of the L.G.A., 1933 (*j*), to be paid out of the county fund, and are not to exceed such scale as the county council may fix. [231]

**District and Parish Councillors.**—There is no limit, as at municipal elections, to a candidate's expenses. Neither is there any limit of time within which claims for election expenses are to be sent in or paid; nor has any return or declaration of election expenses to be made. Both sect. 40 (2) and sect. 54 (2) of the L.G.A., 1933 (*k*), in applying the Act of 1884, exclude the provisions referred to in sect. 37 of that Act. The provisions so mentioned are those prohibiting the payment of any sum and the incurring of any expense by or on behalf of a candidate at an election, on account of or in respect of the conduct or management of the election, those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses or the return or declaration respecting election expenses (*l*).

It might be contended, on the wording of sect. 37 of the Act of 1884, that there can be no illegal payment at any such election, on the ground

(*d*) 7 Statutes 516.

(*e*) *Ibid.*, 517.

(*f*) See *ante*, p. 92.

(*g*) 26 Statutes 313.

(*h*) Act of 1884, s. 5 (1), as altered by the Local Elections (Expenses) Act, 1919; 7 Statutes 513.

(*i*) *Ibid.*, s. 5. *Ex parte Gale* (1905), 69 J. P. 281; 20 Digest 147, 1225.

(*j*) 10 Statutes 746.

(*k*) *Ibid.*, 325, 332.

(*l*) 7 Statutes 530.

that the provisions which prohibit payments do not apply to it. The intention of the legislature was probably to exclude only the provisions of sect. 5 of the Act of 1884, which prohibit payments and the incurring of expenses beyond £25 at the election of a councillor, and of sect. 21, which provide a time for sending in and paying claims and for making a return and declaration of election expenses; but, if so, it is suggested that this intention is not clearly expressed. The other construction would have the effect of permitting at district and parish council elections all payments which at other elections are illegal and entail serious punishment, e.g. payments on account of the conveyance of electors or for bands of music, etc. Even the limited construction which is submitted to be the correct one permits of a person spending any amount of money at such an election, provided that he confines himself to purposes which are neither corrupt nor illegal. [232]

**Return of Expenses.**—Every agent of a candidate at an election of a borough councillor or county councillor must within twenty-three days after the day of election make a return to the candidate in writing of all expenses he has incurred in connection with the election, under penalty of a fine not exceeding £50 (*m*).

Every candidate must within twenty-eight days after the day of election of a borough councillor or county councillor send to the town clerk or clerk of the county council a return of all expenses incurred by him or his agents on account of the election (*n*).

The expenses must be vouched (except in the case of sums under 20*s.*) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to the Act of 1884, or to the like effect.

The return and declaration must be sent in although no expenses have been incurred by the candidate (*o*).

The clerk must keep the return and declaration for twelve months after their receipt; they are open to inspection by any person on payment of 1*s.*, and copies may be obtained at the rate of 2*d.* for every seventy-two words. After twelve months, the return and declaration may be destroyed, or if the candidate so requires, returned to him (*p*). Failure by the candidate to make this return without some authorised excuse is an illegal practice, and making a false declaration is a corrupt practice (*q*). [233]

**Payments by Candidates.**—Claims against candidates must be sent in within fourteen days after the day of election, and all expenses must be paid within twenty-one days after the day of election. Payments not so made are illegal and an illegal practice (*r*). Any such payment made without the consent or connivance of the candidate does not avoid the election, nor is the candidate subject to any incapacity under the Act by reason only of such payment. Exceptions are allowed by sect. 21 (6), which provides that the county court of the district or the High Court, or an election court, may, on application by the candidate or a creditor, allow any claim to be sent in, and any expenses

(*m*) Act of 1884, s. 21 (2); 7 Statutes 519.

(*n*) *Ibid.*, s. 21 (3). L.G.A., 1888, s. 75 (5); 10 Statutes 747; *Ex parte Walker* (1889), 22 Q. B. D. 384; 20 Digest 145, 1199.

(*o*) See *Ex parte Robson* (1887), 18 Q. B. D. 336; 20 Digest 133, 1075.

(*p*) Act of 1884, s. 21 (11).

(*q*) *Ibid.*, s. 21 (5).

(*r*) *Ibid.*, s. 21 (1).

to be paid, after the time limited by sect. 21. Applications are usually made to a Divisional Court, if made to the High Court, but may be made to any judge (*s*). [234]

**What may be paid for.** *Committee rooms.*—At municipal elections, one committee room for the borough or ward for which the election is held, and if the number of electors in the borough or ward exceeds 2,000, one additional committee room for every 2,000 electors and incomplete part of 2,000 electors over and above 2,000 (*t*). At a county council election, the references to a ward should no doubt be read as a reference to the electoral division for which the election is held.

*Clerks, etc.*—At the elections already mentioned, a number of persons may be employed, not exceeding two for a borough, ward or electoral division, and if the number of electors in that area exceeds 2,000, one additional person may be employed for every 1,000 electors and incomplete part of 1,000 electors over and above the said 2,000, and such persons may be employed as clerks and messengers, or in either capacity (sect. 13 (1) (a)).

*Polling agents.*—One for each polling station (sect. 13 (1) (b)).

*Such other expenses* may be incurred as are not forbidden by the Act of 1884, *i.e.* expenses of printing, circularising, holding public meetings and bill-posting. [235]

**What may not be paid for.**—The following expenses are expressly prohibited by the Act of 1884 :

(1) Expenses of conveying electors to or from the poll, or for railway or train fares of electors (sect. 4 (1) (a)).

(2) Payments to an elector for the use of his premises for advertising purposes, or for exhibiting bills or addresses ; except where advertising is the ordinary business of the elector (sect. 4 (1) (b), (3)).

(3) Payments for committee rooms in excess of the allowed number (sect. 4 (1) (c)).

(4) Payment corruptly made to induce a person to withdraw his candidature (sect. 11).

(5) Payments for bands of music, torches, banners, cockades, ribbons or other marks of distinction (sect. 12 (1)). [236]

## VI. RELIEF FROM BREACHES OF THE LAW

**Corrupt Practices.**—There is no relief for any person who is guilty of a corrupt practice, unless the election court reports under sect. 19 of the Act of 1884 (*u*) that a candidate has been guilty *by his agents* of treating and undue influence, without the knowledge or consent of the candidate, or his sanction or connivance, and that the offences were of a trivial, unimportant and limited character. [237]

**Illegal Practices.** *In relation to return of expenses.*—Relief may be obtained from the High Court or an election court by way of authorised excuse for failure to make the return and declaration of expenses, or for any error or false statement (*x*), provided that the error or failure has arisen by reason of the candidate's illness or absence, or by the absence, death, illness or misconduct of any agent, clerk or officer, or by reason

(*s*) *Nichol v. Fearnby*, [1923] 1 K. B. 491 ; 20 Digest 147, 1234.

(*t*) Act of 1884, s. 4 (1) (c) ; 7 Statutes 513.

(*u*) 7 Statutes 518. See also *post*, p. 96.

(*x*) Act of 1884, s. 21 (7) ; 7 Statutes 520.

of inadvertence or any reasonable cause of a like nature, and not by reason of want of good faith on the part of the applicant.

It will be realised that this provision applies only to municipal and county council elections. [238]

*Other Illegal Practices.*—In the case of any illegal practice or illegal payment, employment or hiring arising from any act or omission of the candidate or of any agent or other person, the High Court or an election court may grant relief if they are satisfied that it arose from inadvertence, accidental miscalculation, or some other reasonable cause of a like nature, and not from any want of good faith (a). Sufficient notice must be given of the application. Where there is no election petition, application for relief is made to the High Court, and, it seems, may be made to any judge (b). There must be sufficient evidence of the fact relied on to entitle the applicant to relief.

Where upon the trial of an election petition the election court reports that the candidate has been guilty by his agents of treating or undue influence or an illegal practice, the court may relieve him, if they consider that the offences were of a trivial character, by preventing the election from being avoided and the candidate being subjected to any incapacity (c). This section does not extend to a candidate who has either himself been guilty of a corrupt or illegal practice, or has known of or connived at offences by others: nor does it apply to any case where corrupt practices other than treating or undue influence have been committed by the candidate's agents.

For references to cases in which relief has been granted or refused, see 20 Digest 145—148. [239]

## VII. LONDON

The L.G.A., 1933, does not extend to the election of the L.C.C., and provisos (17) to (20) of sect. 75 of the L.G.A., 1888 (d), were not repealed by the Act of 1933 as respects London. It follows that the costs of the returning officer are still governed by the Parliamentary Elections (Returning Officers) Acts, 1875 and 1886, although these Acts no longer apply to the election of county councils outside London (e).

As respects metropolitan borough councillors, sect. 48 of the L.G.A., 1894 (f), is not repealed by the Act of 1933 as to London, and sub-sect. (3) of the section applied the Act of 1884 and Part IV. of the Municipal Corpsns. Act, 1882, to every election regulated by rules framed under the Act of 1894, subject to adaptations, alterations and exceptions made by those rules. One class of election to which election rules applied was the election of the vestries in London constituted by the Metropolis Management Acts, 1855 to 1890 (g). By sect. 48 (3) (b) of the Act of 1894 (h), sect. 37 of the Act of 1884 (i) was to apply as if the election had been mentioned in the First Schedule to that Act. This had the result of putting elections of vestries, as respects the limit on candidate's expenses, and the return of such expenses in the same position as elections of urban district councillors and parish councillors (j).

(a) Act of 1884, s. 20; 7 Statutes 518.

(b) *Ibid.*, s. 30.

(c) *Ibid.*, s. 19.

(d) 10 Statutes 748.

(e) See *ante*, p. 93.

(f) 10 Statutes 807.

(g) 11 Statutes 889 *et seq.*

(h) 10 Statutes 808.

(i) 7 Statutes 530.

(j) See *ante*, p. 93.

When metropolitan borough councils were constituted by the London Government Act, 1899, sect. 2 (3) of that Act (*k*) applied to them the law relating to the election of vestries in London. This sub-section has recently been repealed in part by the L.C.C. (General Powers) Act, 1934 (*l*), but the repeal does not affect the application of the Act of 1884.

The adaptations to elections of metropolitan borough councillors of Part IV. of the Municipal Corporations Act, 1882, and of the Acts of 1884 and 1911, will be found in Art. 24 of the Metropolitan Borough Councillors Election Rules, 1931 (*m*). In addition to drafting adaptations, the rule excludes so much of sect. 13 of the Act of 1884 (*n*) as permits one polling agent to be employed in each polling station, and allows polling agents to the extent permitted by Art. 16 of the Rules of 1931. Art. 24 also extends to six weeks the time for the presentation of an election petition on the ground of an illegal practice (*o*), and provides that sect. 37 of the Act of 1884 (*p*) shall be read as if a reference to an election of borough councillors were substituted for a reference to any of the elections mentioned in the First Schedule to the Act of 1884.

The election rules of 1931 have been amended by the Metropolitan Borough Councillors Election Rules, 1933 (*q*), and recently by the Metropolitan Borough Councillors Election Rules, 1934 (*r*), the latter rules having been framed in consequence of alterations of the law made by the L.C.C. (General Powers) Act, 1934. [240]

(*k*) 11 Statutes 1226.

(*l*) 24 & 25 Geo. 5, c. xl.

(*m*) S.R. & O., 1931, No. 22.

(*n*) 7 Statutes 516.

(*o*) See s. 25 (1) of the Act of 1884 ; 7 Statutes 522.

(*p*) 7 Statutes 530.

(*q*) S.R. & O., 1933, No. 1127.

(*r*) S.R. & O., 1934, No. 963.

## CORRUPTION IN OFFICE

|             | PAGE    |     | PAGE                      |         |     |
|-------------|---------|-----|---------------------------|---------|-----|
| COMMON LAW  | — — — — | 97  | TRANSACTIONS FORBIDDEN TO |         |     |
| STATUTE LAW | — — — — | 98  | A MEMBER OR AN OFFICER    |         |     |
| Offences    | — — — — | 98  | OF A LOCAL AUTHORITY      |         |     |
| Procedure   | — — — — | 100 | CONTRACTING WITH THE      |         |     |
| Penalties   | — — — — | 100 | AUTHORITY                 | — — — — | 101 |
|             |         |     | Members                   | — — — — | 101 |
|             |         |     | Officers                  | — — — — | 102 |

*See also titles : CORRUPT AND ILLEGAL PRACTICES ; CONTRACTS.*

FOR THE GENERAL LAW RELATING TO BRIBERY AND CORRUPTION, see HALSBURY'S LAWS OF ENGLAND (2ND ED.), VOL. I, TITLE "AGENCY," AND VOL. 9, TITLE "CRIMINAL LAW AND PROCEDURE."

**Part I. Common Law.**—Bribery appears to have been a common law misdemeanor from the earliest times, but has been chiefly confined to the receiving or offering of bribes for a corrupt purpose by or to persons whose ordinary business or profession related to the adminis-

tration of justice, but now certainly extends to any public officer. After dealing with judicial corruption, the offence of corrupting other public officers is defined by Stephen as follows (a) : " Everyone commits a misdemeanor who by any means endeavours to force, persuade or induce any public officer, not being a judicial officer, to do or omit to do any act which the offender knows to be a violation of such officer's official duty."

It is quite clear that the offence is committed by any person in an official situation who corruptly uses the power or interest of his place for rewards or promises.

A person attempting to bribe a magistrate with the intention of influencing his decision is guilty of an attempt to corrupt (b).

If a person is bound by law to act in disregard of his private emolument, and another individual by a corrupt contract engages such person, on condition of the payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are by such contract guilty of bribery (c). [241]

**Statute Law.**—The subject of bribery and corruption of and by members, officers or servants of public bodies is dealt with by the Public Bodies Corrupt Practices Act, 1889 (d), and the Prevention of Corruption Acts, 1906 (e) and 1916 (f).

The Public Bodies Corrupt Practices Act, 1889 (g), applies to any person employed in any office or employment as a member, officer or servant of a public body as defined in sect. 7, that is to say, of any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act. The Act of 1889 was extended by sect. 4 (2) of the Prevention of Corruption Act, 1916 (h), to local and public authorities of all descriptions. Apparently the enlarged definition is not intended to remove the restrictions in sect. 7 of the Act of 1889 (i), excluding public bodies existing elsewhere than in the United Kingdom. Sect. 4 (2) of the Act of 1916 does not attempt to describe in detail what classes of public bodies are local and public authorities, but sect. 305 of the L.G.A., 1933 (k), contains a definition of "public body" in which are enumerated various kinds of public bodies, and these may be taken as included in sect. 4 (2) of the Act of 1916.

In the Act of 1889, "public office" means any office or employment of a person as a member, officer or servant of a public body, and "person" includes a body of persons, corporate or unincorporate (l). [242]

**Offences.**—A misdemeanor is committed by (1) every person who by himself or by or in conjunction with any other person corruptly

(a) Dig. of Crim. Law, Art. 137.

(b) *R. v. Gurney* (1867), 31 J. P. 584; 15 Digest 662, 7150.

(c) *R. v. Lancaster and Worrall* (1890), 16 Cox, C. C. 737; 20 Digest 189, 1650.

(d) Ss. 1, 2, 3, 4, 7; 4 Statutes 718.

(e) S. 1; 4 Statutes 724.

(f) Ss. 1, 2; 4 Statutes 841.

(h) *Ibid.*, 842.

(k) 26 Statutes 465.

(g) 4 Statutes 718.

(i) *Ibid.*, 720.

(l) S. 7; 4 Statutes 720.

(see *infra*) solicits or receives, or agrees to receive for himself or for any other person, any gift, loan, fee, reward or advantage whatever, as an inducement to or reward for, or otherwise on account of, any member, officer or servant of a public body doing, or forbearing to do, anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned (*m*) ; and by (2) every person who, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers, any gift, loan, fee, reward or advantage whatsoever, to any person, whether for the benefit of that person or another person, with the object mentioned in (1) (*n*). Thus the Act applies both to the person bribing and the person bribed.

Where in proceedings under the Act of 1906 or the Act of 1889 (*o*), it is proved that any money, gift or other consideration has been paid (*p*) or given to or received by a person in the employment of His Majesty or any Government department, or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from His Majesty or any Government department or public body, the money, gift, or consideration is to be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in the Act unless the contrary is proved (*q*).

The person accused need not be a member, officer or servant of a public body (*r*).

The offer or acceptance of an "advantage" within sect. 1 of the Act of 1889, includes the offer or acceptance of any office or dignity, and any forbearance to demand any money or money's worth, or valuable thing, and also any real or pretended aid, vote, consent or influence, or agreement or endeavour to procure, or the holding out of any expectation of, any gift, loan, fee, reward or advantage, as here defined (*s*).

A misdemeanor is committed (1) by any agent (see *post*, p. 100) who corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ; and (2) by any person who corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward with the object mentioned in (1) ; and (3) by any person who knowingly (*t*) gives to any agent, or by any agent who knowingly uses with intent to deceive his principal, any receipt, account or other document, in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any

(*m*) S. 1 (1) ; 4 Statutes 718.

(*n*) S. 1 (2).

(*o*) *I.e.* the Prevention of Corruption Act, 1906 ; 4 Statutes 724, and the Public Bodies Corrupt Practices Act, 1889 ; 4 Statutes 718.

(*p*) When the payment, etc., of the money has been proved, the onus is on the defendant ; *R. v. Jenkins, R. v. Evans-Jones* (1923), 87 J. P. 115 ; 15 Digest 1014, 11,400.

(*q*) Prevention of Corruption Act, 1916, s. 2 ; 4 Statutes 841.

(*r*) *R. v. Edwards* (1895), 59 J. P. 88.

(*s*) Public Bodies Corrupt Practices Act, 1889, s. 7 ; 4 Statutes 720.

(*t*) An intention to corrupt the agent is not an essential ingredient in this offence. *Sage v. Eichholz*, [1919] 2 K. B. 171 ; 15 Digest 1014, 11397.

material particular, and which to his knowledge is intended to mislead the principal (*u*).

In the above provision, "agent" includes any person employed by or acting for another, and "principal" includes an employer. A person serving under the Crown or under any local or public authority of any description is also an agent (*a*). The Scottish courts have held that a police constable is an agent (of the chief constable) within the section (*b*). [243]

*Procedure.*—Under sect. 6 of the Public Bodies Corrupt Practices Act, 1889 (*c*), the indictment may be tried at quarter sessions, but not under the Prevention of Corruption Act, 1906 (*d*), although offences under the latter Act may be tried summarily (*e*). Prosecutions under either Act may only be instituted by or with the consent of the Attorney-General. The Vexatious Indictments Act, 1859 (*f*), was applied to offences under the Act of 1906 by sect. 2 (2) of that Act, but the subsection in question was repealed by sect. 10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 (*g*), and the new procedure in sect. 2 of that Act substituted, consequent on the abolition of grand juries.

An offence under these Acts may still be prosecuted at common law, if it is a common law offence; nor is it less an offence because the member, officer or servant in question may have been invalidly appointed or elected (*h*). [244]

*Penalties.*—On conviction on indictment under the Act of 1889 or the Act of 1906, imprisonment not exceeding two years with or without hard labour, or a fine not exceeding £500, or both, may be imposed (*i*). Under sect. 2 of the Act of 1889, the court may, in addition, at their discretion order, (1) the amount received or its value to be paid to the public body, in such manner as the court direct; (2) the offender to forfeit his office and be excluded from any public office for seven years; (3) if the offender is an officer or servant of a public body, that he shall forfeit his right and claim to pension or compensation for loss of office; and (4) on a second conviction, the offender's exclusion from public office for ever, and loss of his vote at elections of members of Parliament or of any public body (*k*). Under the Act of 1889 or 1916, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any Government department or any public body, or a subcontract to execute any work comprised in such contract, the maximum penalty is penal servitude for seven years (*l*). On summary conviction under the Prevention of Corruption Act, 1906, the penalty is imprison-

(*u*) Prevention of Corruption Act, 1906, s. 1 (1); 4 Statutes 724. Any contract founded on such corrupt consideration is void, and the bankruptcy court will go behind any judgment founded upon it. *Re A Debtor* (No. 229 of 1927), [1927] 2 Ch. 367; Digest (Supp.).

(*a*) Prevention of Corruption Act, 1916, s. 4 (3); 4 Statutes 842.

(*b*) *Graham v. Hart*, [1908] S. C. (Just. Cas.) 26; 15 Digest 1014, c.

(*c*) 4 Statutes 720.

(*d*) S. 2 (5); *ibid.*, 725.

(*e*) S. 1 (1); *ibid.*, 724.

(*f*) 4 Statutes 537.

(*g*) 26 Statutes 83.

(*h*) Public Bodies Corrupt Practices Act, 1889, s. 3; 4 Statutes 719.

(*i*) *Ibid.*, s. 2; *ibid.*, and Prevention of Corruption Act, 1906, s. 1 (1); 4 Statutes 724.

(*k*) Public Bodies Corrupt Practices Act, 1889, s. 2; 4 Statutes 719.

(*l*) Prevention of Corruption Act, 1916, s. 1; *ibid.*, 841.

ment for not more than four months with or without hard labour, or a fine not exceeding £50, or both (m). An appeal to quarter sessions lies against a conviction by a court of summary jurisdiction (n). [245]

**Transactions forbidden to a Member or an Officer of a Local Authority contracting with the Authority.**—The law relating to transactions which are forbidden to a member or officer of a local authority is now dealt with by the L.G.A., 1933 (o).

**Members.**—If a member of a local authority (p) or of a committee or sub-committee thereof, or a joint committee of local authorities (q) has any pecuniary interest, direct or indirect (other than as a rate-payer or inhabitant of the area, or as an ordinary consumer of gas, electricity or water) in any contract or proposed contract, or other matter (except any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public) and that member is present at a meeting of the local authority or committee, at which the contract or other matter is the subject of consideration, he must, as soon as practicable after the commencement of the meeting, disclose the fact, and must not take part in the consideration or discussion of, or vote on any question with respect to the contract or other matter (r).

A member comes within the section if (1) he or any nominee of his is a member of a company or body (except a public body as defined *infra*) with which the contract is made or is proposed to be made, or which has a direct pecuniary interest in any other matter under consideration; or (2) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in any other matter under consideration. A member of a company or other body is not within the section by reason only of his membership if he has no beneficial interest in their shares or stock (s).

A public body includes a local authority and any trustees, commissioners or other persons who, as a public body and not for their own profit, act under any enactment or statutory order for the improvement of any place or for the supply to any place of water, gas or electricity, or for providing or maintaining a cemetery or market in any place, and any other authority having powers of levying, or issuing a precept for, any rate for public purposes (t).

The penalty for failing to comply with these provisions is, on summary conviction, a fine not exceeding £50, unless the member proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest, was the subject of consideration at the meeting (u). Prosecutions are to be instituted only by or on behalf of the Director of Public Prosecutions (a).

(m) Prevention of Corruption Act, 1906, s. 1 (1); 4 Statutes 724.

(n) *Ibid.*, s. 2 (6). (o) 26 Statutes 295.

(p) L.G.A., 1933, s. 76 (1); 26 Statutes 346.

(q) *Ibid.*, s. 95; *ibid.*, 357.

(r) *Ibid.*, s. 76 (1); *ibid.*, 346. See *Lapish v. Braithwaite*, [1926] A. C. 275; 33 Digest 67, 405, and *R. v. Hendon R.D.C., Ex parte Chorley*, [1933] 2 K. B. 696; Digest (Supp.); and see title CONTRACTS, *ante*, p. 12.

(s) L.G.A., 1933, s. 76 (2); 26 Statutes 346. *Re Gloucester Municipal Election Petition*, 1900, *Ford v. Newth*, [1901] 1 K. B. 683; 33 Digest 66, 403.

(t) L.G.A., 1933, s. 305; 26 Statutes 465.

(u) *Ibid.*, s. 76 (6); *ibid.*, 347.

(a) *Ibid.*, s. 76 (7).

In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of sect. 76 to be also an interest of that other spouse (b).

A general notice in writing to the clerk of the authority or joint committee is sufficient disclosure (c).

The clerk of the authority or joint committee is to record particulars of any disclosure or written notice in a book, to be kept open to the inspection of any member of the local authority or committee. In the case of a member of a committee or sub-committee who is not a member of the local authority, his right of inspection is limited to entries regarding that committee or sub-committee (d).

The county council, as respects a member of a parish council, and the M. of H., as respects a member of any other local authority, may, subject to conditions, remove any disability imposed by sect. 76 in any case in which the number of members of the local authority so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears that it is in the interests of the inhabitants of the area that the disability should be removed (e).

A local authority may by standing orders provide for the exclusion of a member of the authority from a meeting of the authority, whilst any contract, proposed contract, or other matter in which he has an interest is under consideration (f). **[246]**

*Officers.*—If it comes to the knowledge of an officer employed by a local authority or a joint committee appointed under Part III. of the L.G.A., 1933, that a contract in which he has any pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be entered into by the authority or joint committee or any committee thereof, he must, as soon as practicable, give notice in writing of the fact that he is interested therein (g). There is no provision for an officer giving a general notice and a separate notice must be given on each occasion (h).

An officer of a local authority or joint committee must not, under colour of his office or employment, exact or accept any fee or reward whatsoever other than his proper remuneration (i).

The penalty, in either case, on summary conviction, is a fine not exceeding £50 (j).

In the L.G.A., 1933, the expression "officer" includes a servant (k), and sub-sects. (2) and (3) of sect. 76 are applied for the purpose of defining what is an indirect pecuniary interest. It will be seen that in the case of members of a local authority prosecutions are only to be instituted by or on behalf of the Director of Public Prosecutions, but this protection against frivolous prosecutions has not been given to officers. **[247]**

(b) L.G.A., 1933, s. 76 (3); 26 Statutes 347.

(c) *Ibid.*, ss. 76 (4), 95.

(d) *Ibid.*, ss. 76 (5), 95.

(e) *Ibid.*, s. 76 (8).

(f) *Ibid.*, s. 76 (9).

(g) *Ibid.*, s. 123 (1).

(h) The provisions of s. 76 of the Act of 1933 as to what is an interest are applied to officers.

(i) L.G.A., 1933, s. 123 (2).

(j) *Ibid.*, s. 123 (3).

(k) *Ibid.*, s. 305.

# COSTING

|                                     | PAGE  |     | PAGE                                  |       |     |
|-------------------------------------|-------|-----|---------------------------------------|-------|-----|
| <b>GENERAL</b>                      | — — — | 103 | <b>Trading Undertakings</b>           | — — — | 110 |
| <b>MECHANISATION</b>                | — — — | 103 | <b>Electricity</b>                    | — — — | 110 |
| <b>CENTRALISATION OF CONTROL</b>    | — — — | 104 | <b>Gas</b>                            | — — — | 111 |
| <b>CO-OPERATIVE PURCHASING</b>      | — — — | 105 | <b>Transport</b>                      | — — — | 111 |
| <b>DEPARTMENTAL COSTING STAND-</b>  |       |     | <b>Water</b>                          | — — — | 111 |
| ARDS                                | — — — | 106 | <b>Housing</b>                        | — — — | 112 |
| <b>DEPARTMENTAL COSTS AND UNITS</b> | — — — | 108 | <b>Constructional</b>                 | — — — | 112 |
| Rate Fund Services                  | — — — | 108 | <b>Maintenance</b>                    | — — — | 112 |
| Cleansing                           | — — — | 108 | <b>RECONCILIATION OF COSTING WITH</b> |       |     |
| Hospitals                           | — — — | 109 | <b>FINANCIAL RECORDS</b>              | — — — | 112 |
| Lighting                            | — — — | 109 | <b>EXPENSES OF ADMINISTRATION</b>     | — — — | 113 |
| Parks                               | — — — | 109 | <b>CONCLUSION</b>                     | — — — | 113 |
| Works                               | — — — | 109 |                                       |       |     |

*See also titles :*

FINANCE ;  
FINANCE COMMITTEE ;

FINANCE DEPARTMENT ;  
FINANCIAL OFFICER.

## GENERAL

One of the methods by which local authorities seek to exercise financial control is by the operation of modern costing systems. Such systems include the supervision of methods of wage payment, the control of stocks and stores, departmental costing, the allocation of general expenses of administration, and the submission of full and accurate claims for Government grants.

Costing can be, and is, beneficially employed in connection with all the trading undertakings of local authorities as well as in most of the rate fund services.

Well established principles, mainly relating to labour, materials and overhead expenses can usefully be employed in all departments. Clerical salaries and wages are now allocated on rational lines and not as formerly charged to one general account. Where the number of types of materials dealt with is considerable, the introduction of machinery for purposes of dissection is usually an economical proposition, particularly when the costing work is centralised. Generally accepted rules with regard to requisition, order, receipt, custody and issue of stores are followed and all purchases of materials (and services) authenticated by official records. Weekly cost sheets are prepared for all works, the true cost of which it is essential should be available, by extracting the necessary details from original entries prior to the normal analysis of the expenditure for the accounts.

Costing as operated to-day in the local government service is a development of the recommendations appearing in the Report of the Departmental Committee on the Accounts of Local Authorities, 1907, and the resulting cost accounts are merely an extension of the classification of an authority's financial transactions. [248]

## MECHANISATION

A comparatively recent feature of costing schemes is the introduction of mechanical devices for classifying and tabulating records. By the

utilisation of such equipment written information, having first been transposed into suitable form, is so handled mechanically as to give results identical with those previously given by hand methods and to produce them much more expeditiously.

The basis of costing by machinery is the "coding" of all original particulars whether they refer to dates, descriptions, locations, or other details into numbers, so that all necessary information is reduced to a numerical basis before proceeding. The final results are naturally produced also as numbers which may need to be decoded for the benefit of those for whom the results are prepared.

Mechanical installations of this nature can be used, *inter alia*, for the following purposes : Distributing wages and materials charges ; computing hours, amounts and overhead charges on completed jobs ; checking estimates ; making wage rate adjustments in accordance with the basis of payment of labour ; preparing monthly statements of comparative costs ; comparing hours, amounts and overheads of work in progress ; analysing details of expenses ; stores accounting and control.

The advantages to be gained by mechanisation of these processes need not be enumerated here, but generally it may be said that it gives greater scope for increased efficiency in costing at less expense. [249]

#### CENTRALISATION OF CONTROL

The consideration of mechanical costing leads naturally to the much debated question of centralisation.

Centralised costing would appear to be desirable in all, although it is usually only practicable in the case of the larger, local authorities. Many, however, advocate decentralisation irrespective of the size of the authority. Having regard to the fact that cost accounts are merely an extension of the classification of transactions adopted for the purpose of the financial accounts it would seem that they could be more satisfactorily controlled by the chief financial officer. Such control, however, does not necessarily imply centralisation, and control by the finance department may be quite effective when the costing work is decentralised. Centralisation, however, in its broadest sense means not only control, but the organisation of the entire costing of all departments in one central costing branch either attached to, or working in the closest co-operation with, the finance department.

With this underlying idea in mind, the following advantages of centralisation are suggested :

Organisation in the office of, as well as control by, the chief financial officer satisfies the principle of internal check and gives greater confidence in the published results.

The finance department has records of all charges, including loan charges, legal expenses, expenditure on purchases of property, central establishment allocations, etc., not immediately or directly available to executive departments, and is more likely, therefore, to compile a complete statement of the entire cost, including a full proportion of overhead expenses.

Reconciliation with the financial records is automatically secured. Economies in staffing and machine "units" are facilitated.

Economies in other matters such as central stores are also facilitated (a).

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(a) See Co-operative Purchasing, *post*, p. 105.

On the other hand the supporters of decentralisation urge that :

Costing records should be prepared by the department by which the works are carried out for reasons of convenience of reference to technicians, etc. ;

Records are more quickly available to the technical staff ;

The finance department is not competent to comment upon or interpret fairly cost records involving technical considerations ;

Complete centralisation is impracticable except in the case of large authorities which have numerous accounting and costing sections of staffs of all undertakings housed in one administrative block of buildings.

It may be that in certain cases a middle course of supervision by the financial officer is preferable to one of complete centralisation or one of complete decentralisation, and in any event it is essential, if satisfactory results are to be obtained, that there should be the fullest co-operation between the finance and executive departments.

In many of the larger authorities a qualified cost clerk is in charge of the costing of each of the trading departments and of the more important of the rating departments. The cost clerks, in some cases, act under the supervision of a cost accountant who is a member of the staff of the chief financial officer. [250]

#### CO-OPERATIVE PURCHASING

The introduction of co-operative purchasing facilitates economy, which is the aim of all costings.

It involves the purchase of all supplies for a local authority by one department. It does not necessarily involve the formation of an entirely new department, as one of the departments already in being can be utilised as the central purchaser for all other departments.

It is necessary for the transition from one method to the other to be gradual in order to avoid dislocation and friction. In the early stages of the scheme, it is usually desirable to concentrate on consumable stores.

The methods adopted usually take the following form : executive departments render to the purchasing department statements of stores required over suitable periods ; schedules for tender are prepared from these statements and the necessary contracts placed by the purchasing department ; executive departments are then informed as to contracts, each department thus being enabled to place its own orders against the respective contracts, or alternatively, each department notifies the purchasing department of its immediate requirements, the latter dealing directly with the contractors and arranging for direct deliveries where necessary.

The advantages claimed for co-operative purchasing include : commodities of a similar nature required by the various departments can be standardised in type, and the resulting increased quantities are purchased at more economical prices ; there is a concentration of purchasing power and a consequent accession of influence as a buyer ; supplies are more promptly delivered and safeguards against leakage and abuse more easily effected ; a staff specialised in buying is gradually evolved. [251]

## DEPARTMENTAL COSTING STANDARDS

Complete benefits from costing by local authorities are obtainable only by means of schemes embodying standards scientifically computed.

A necessary preliminary is a rational arrangement in the presentation of departmental estimates. This generally entails a reclassification of expenditure, the grouping being amended in subsequent years as found necessary. Code references are determined and on the basis of these all expenditure allocations are made. The first item in each code group designates the department; the second ((a), (b), (c), etc.), the branch or section of that department; the third, the type of expenditure; and the fourth indicates the order in which items of each type of expenditure appear. Examples of expenditure groupings of the third class are: (A) Personal remuneration and emoluments (salaries, wages, pensions, gratuities, allowances, uniform, clothing). (B) Expenses of operation (consumable materials, carriage, haulage, cartage, implements, water, gas, electric current). (C) Office expenses (telephone service, printing and stationery, advertising, postages and telegrams, travelling expenses, conferences). (D) Rents, rates, taxes, licences, customs, insurances. (E) Repairs and maintenance. (F) Loan charges. (G) Special. (H) Other incidental outlays.

The appended tabulation of a portion of a classification sheet as applied to a Public Baths department illustrates the system of code reference adopted:

|  | Baths Establishments. |           |           |
|--|-----------------------|-----------|-----------|
|  | Central.              | Northern. | Southern. |
| Wages - - - - -                                | 9 (a) A1              | 9 (b) A2  | 9 (c) A3  |
| National insurance - - - - -                   | „ D1                  | „ D4      | „ D7      |
| Coals and cartage - - - - -                    | „ B1                  | „ B5      | „ B9      |
| Towelling and soap - - - - -                   | „ B2                  | „ B6      | „ B10     |
| Water - - - - -                                | „ B3                  | „ B7      | „ B11     |
| Electric current - - - - -                     | „ B4                  | „ B8      | „ B12     |
| Telephone service - - - - -                    | „ C1                  | „ C3      | „ C5      |
| Printing, stationery and advertising - - - - - | „ C2                  | „ C4      | „ C6      |
| Rent, rates and taxes - - - - -                | „ D2                  | „ D5      | „ D8      |
| Insurance - - - - -                            | „ D3                  | „ D6      | „ D9      |
| Property repairs - - - - -                     | „ E1                  | „ E2      | „ E3      |
| Other outlays - - - - -                        | „ H1                  | „ H2      | „ H3      |

The symbols are suggestive and staffs quickly become familiar with them. Care is taken that no combination can have two different interpretations.

Each account, pay roll, and stores allocation, passed to the finance department for payment or entry, is boldly marked with the code or codes referring to the expenditure involved, no narrative being necessary except in the cases of groups G and H. Other outlays, in addition to being described by the appropriate code references, are allocated in detail.

The expenditure for the first complete year of operation under this system is often selected as a standard for future comparisons, but care is necessary to secure that the figures used represent a normal outlay.

When the figures are available, standards are compiled not only for departments but also for the various groups of expenditure, thus :

| Services.            | Group Standards. |   |   |   |   |   |   |   | Departmental Standards. |
|----------------------|------------------|---|---|---|---|---|---|---|-------------------------|
|                      | A                | B | C | D | E | F | G | H |                         |
| (i) Rate fund        | £                | £ | £ | £ | £ | £ | £ | £ | £                       |
| ..... 1              |                  |   |   |   |   |   |   |   |                         |
| ..... 2              |                  |   |   |   |   |   |   |   |                         |
| ..... .              |                  |   |   |   |   |   |   |   |                         |
| *Bath establishments | 9                |   |   |   |   |   |   |   |                         |
| ..... .              |                  |   |   |   |   |   |   |   |                         |
| (ii) Trading         | .....            |   |   |   |   |   |   |   |                         |
| ..... .              |                  |   |   |   |   |   |   |   |                         |
| ..... .              |                  |   |   |   |   |   |   |   |                         |

\* See illustrative form, *ante*.

The expenditure records in the finance department being constructed so as to accommodate allocations according to code, it is a simple matter to inform executive departments at the close of each month, or other agreed period, of the expenditure to date under each head. This is done on columnar statements of the following type :

| Code.             | Standard. | Estimate.               |    |    | Actual.                        |    |    | Actual percentage of: |           |
|-------------------|-----------|-------------------------|----|----|--------------------------------|----|----|-----------------------|-----------|
|                   |           | Year ending ..... 193 . |    |    | ..... months ended ..... 193 . |    |    | Standard.             | Estimate. |
| 3 (a) A1          | —         | £                       | s. | d. | £                              | s. | d. | per cent.             | per cent. |
| ,, A2             | —         |                         |    |    |                                |    |    |                       |           |
| ,, <i>et seq.</i> | —         |                         |    |    |                                |    |    |                       |           |
| ,, B1             | —         |                         |    |    |                                |    |    |                       |           |
| ,, B2             | —         |                         |    |    |                                |    |    |                       |           |
| ,, B3             | —         |                         |    |    |                                |    |    |                       |           |
| ,, .              | —         |                         |    |    |                                |    |    |                       |           |
| ,, H1             | —         |                         |    |    |                                |    |    |                       |           |

For the purposes of these statements, however, only items of "controllable expenditure" are stated, expenses such as those attaching to interest payments, sinking fund contributions, rates, taxes and insurance, being expressly excluded as not being under the control of the executive departments.

By these or similar methods and by repeated amendments of code according to requirements all departmental costs are satisfactorily standardised.

If the foregoing procedure is followed it is a simple matter at the end of each financial year to compile useful aggregate tabulations of costs relating to all departments of the local authority.

In compiling statistics, in setting departmental standards, and in

making comparisons particular attention is paid to the following points :

Loan charges. If more than the statutory amount is set aside in a particular year (including the standard year) a special note to that effect is made.

Standards are amended periodically in order to give effect to any extensions of departmental activities.

Variations from standards are stated not only as percentages but also as sterling aggregates.

Monthly standards take cognisance of charges recurring at quarterly or half-yearly intervals.

The selection of a standard year does not imply perfect efficiency in that particular year ; it merely constitutes a basis for comparison. [252]

#### DEPARTMENTAL COSTS AND UNITS

The preceding section deals principally with internal comparisons ; that is to say, with departmental costs of one local authority for comparison month by month and year by year.

In this section, the unit costs indicated are considered more from the point of view of comparison with other authorities.

A scheme of unit costs traces inefficiency and extravagance. Just as cost accountancy is a refinement of financial accountancy, so a system of unit costs is a classification of aggregate costs. The aim to control expenditure by means of costing can be fostered by the publication of tabulations of standard unit costs throughout the country.

In the subjoined sections, appropriate units for certain services to which costing methods can be beneficially applied are indicated immediately following each sub-title. [253]

**Rate Fund Services.**—It is only by adequate systems of control reinforced by modern financial regulations, and wisely conceived committee policy, that local rates can be confined within reasonable limits. All rate fund expenditure is, or should be, carefully scrutinised, and appropriate costs prepared, by officials fully qualified to undertake such duties. Unit costs of selected rate fund services are now considered.

#### Cleansing (b).

##### Main Accounts :

|                   |          |                         |
|-------------------|----------|-------------------------|
| Refuse collection | per ton  | per 1,000 of population |
| Refuse disposal   | "        | "                       |
| Street cleansing  | per mile | "                       |

##### Subsidiary Accounts :

|                           |   |                                |
|---------------------------|---|--------------------------------|
| Horses, carts and stables | } | Allocated according to "user." |
| Lorries and sweepers      |   |                                |
| Workshops                 |   |                                |
| General administration    |   |                                |

If the department has several branch depots a further analysis is necessary, as is also required of the cost of mechanical trans-

(b) The larger local authorities base their cleansing costs on the M. of H.'s Memorandum (March 1925) on the subject, and allocations are in accordance with the recommendations contained therein.

port, if the separate running costs of each vehicle are desired. All loads are stated in tons on daily slips issued to carters and lorrymen. If it is impossible, owing to lack of weighbridges, to obtain exact weights, estimates are based on weights of reliable sample loads.

### *Hospitals (c).*

|               |                                    |
|---------------|------------------------------------|
| Wards         | per occupied bed ; per patient-day |
| Ambulance     | per mile run                       |
| Dining-rooms  | per person fed                     |
| Dispensary    | per prescription                   |
| Nurses' Homes | per nurse                          |

Among the factors on which hospital costs depend are :

- (1) The design of the building, and its geographical position.
- (2) The nature of the diseases treated and the extent to which the building is occupied throughout the year.
- (3) The relative proportion of the number of staff to the number of patients.

### *Lighting.*

- (1) Per lamp.
- (2) Per mile of street.
- (3) Per 1,000 of population.

### *Main Accounts :*

Gas : street lamps ; private lamps.

Gas (automatic) : street lamps.

Electricity : street lamps.

Lighting of public lamps of neighbouring authorities.

### *Subsidiary Accounts :*

These show costs of different sizes of gas street lamps and of electrical street lamps, facilitating comparisons between different districts.

The cost of "change-over" from gas to electric lighting (or the reverse) should be specially noted in any tabulation of costs.

### *Parks.*

Per acre.

Per 1,000 of population.

Tennis courts }  
Bowling greens } per player.

Parks may in some cases include promenades, etc.

### *Works.*

#### *(i.) Roads and Streets (d).*

Per mile. Per 1,000 of population.

The net cost of highways is suitably sub-divided thus :

1. Maintenance, including minor improvements.
2. Major improvements.
3. New constructions.

Subsidiary costs per square yard relating to different types of construction are also prepared.

(c) The M. of H. issues annual returns relating to hospital costs.

(d) Returns relating to road construction and repair are called for annually by the M. of T.

(ii.) *Private Street Works (e).*

In order to arrive at a reasonably accurate figure of cost of private street works carried out by direct labour, for the purposes of their recovery, percentages of varying magnitudes are usually added to the different elements of cost. By this method, if the percentages are carefully calculated, overhead expenses are fully recovered. Recoveries on account of haulage and rolling are made on the basis of fixed hourly rates designed to cover wages of drivers, cost of fuel, garaging, depreciation, repairs, oils, etc.

(iii.) *Sewers.*

Per mile.

(iv.) *Sewage Disposal Works.*

Cost divisions (*f*) :

Screening and tank treatment.

Filtration and humus tank treatment.

Activated sludge treatment.

Land treatment other than sludge treatment.

Pumping.

(v.) *Subsidiary Accounts :*

|                       |          |
|-----------------------|----------|
| Mechanical transport. | Rollers. |
|-----------------------|----------|

|            |                  |
|------------|------------------|
| Workshops. | Stores expenses. |
|------------|------------------|

|                  |             |
|------------------|-------------|
| Plant operating. | Implements. |
|------------------|-------------|

|          |              |
|----------|--------------|
| Stables. | Supervision. |
|----------|--------------|

The charge headings are varied to suit the circumstances. **[254]**

**Trading Undertakings.**—Costing and financial control in the trading undertakings of local authorities are of the utmost importance, not only to manufacturers and traders, but to the general public as well.

*Electricity.*

Per 1,000 units generated (or sold).

Per unit in lb. weight of coal consumed.

*Subsidiaries :*

Working costs per unit sold.

Coal account.

Generating station account.

There are special considerations applying to the costing of an electricity undertaking which do not arise in the other supply services. Extensive plant is idle for long periods owing to the peak load existing only for a small proportion of the hours of darkness, and storage in large quantities is impossible. These and other exceptional characteristics account for the otherwise surprising practice of supplying electricity for power, etc. in certain instances, at prices lower than the average cost of generating it.

(e) P.H.A., 1875, s. 150 (13 Statutes 686), and Private Street Works Act, 1892 (9 Statutes 193).

(f) In accordance with form of annual return accompanying Circular No. 1165, issued by the M. of H. to sanitary authorities in 1931.

*Gas.*

Per therm (or per 1,000 cubic feet) of gas made (or sold).  
 Per ton of coal carbonised.

*Subsidiaries :*

Motor vehicles, wagons, gas fire repairs, gas cooker repairs, depot maintenance, retorts and settings, water gas, workshops.

One of the most pressing of problems in a gas undertaking is that of costing the wear and tear, for which purpose statements are prepared at frequent intervals for submission to the gas engineer for his guidance.

*Transport.*

Per 100 seat-mile.  
 Per car, 'bus, or vehicle mile.  
 Per passenger carried.

*Subsidiaries :*

Cost per mile for current (tramcars and trackless trolley vehicles) Permanent way (tramways) :  
 Per mile of single track laid.  
 , , , (excluding concrete under-bed).

Maintenance : per mile of single track.

*Garage account.*

In comparing the running costs of tramcars with other forms of road passenger transport such as 'buses, it is advisable to utilise the 100 seat-mile unit in preference to others which give misleading ratios owing to the widely varying seating capacities of the different types of vehicle. On this basis, costs relating to tramcars usually compare favourably with those for 'buses and trackless trolley vehicles. General experience indicates that trackless trolley vehicles (g) can be run at a slightly lower rate per vehicle mile than can petrol 'buses. The fuel oil engine 'bus, too, produces a lower working cost per mile than does the petrol 'bus, but as the former has not yet completely passed the experimental stage any conclusion should be drawn with caution.

*Water.**Constructional :*

Puddling, per cubic yard.  
 Pipe laying, per lineal yard.

*Operating :*

Per million gallons supplied (in £s.).  
 Per thousand , (in pence).  
 Per thousand of population.

*Meter services.*

The main point for comment is that great care must be exercised in the allocation of the wages factor in costs relating to water undertakings as between capital and revenue works. [255]

(g) Illuminating figures relating to trackless trolley undertakings as well as to the better known tramways and light railways are contained in the Returns of the M. of T., published annually by H.M. Stationery Office.

**Housing—Constructional (h).**

Sites A, B, C, etc.

Blocks 1, 2, 3, 4, 5, 6, etc.

Site A, Block 1.

- |                  |                          |
|------------------|--------------------------|
| (a) Excavating.  | (k) Electrical.          |
| (b) Concreting.  | (l) Roads (ppn)          |
| (c) Draining.    | (m) Sewers (ppn)         |
| (d) Bricklaying. | (n) Site (ppn)           |
| (e) Tiling.      |                          |
| (f) Joinering.   | (o) Subsidiary transfers |
| (g) Plastering.  |                          |
| (h) Painting.    |                          |
| (i) Plumbing.    | (p) Overhead expenses.   |
- } According to frontage.  
According to area.  
Transport, plant,  
tools, etc. according to  
“user.”

Other sub-divisions :

Type of construction :

Brick. Concrete. Steel.

Contractors :

P, Q, R, etc.

Acts : 1919, 1923, 1924, 1930, etc.

It is only by the operation of a sound costing system that the relative costs of house building by direct labour on the one hand and by contract on the other can be clearly defined. Comparisons are often vitiated because of very unsatisfactory and unconvincing methods of allocating overhead expenses. Obviously a local authority rate, including too small a proportion of the full quota of establishment and other charges, would be expected to be lower than a contract rate arrived at after the full amount of overhead charges had been brought into the estimate.

*Maintenance.*—Annual cost per house analysed under the various schemes and activities.

Repair work :

External painting.

External repairs (classified).

Internal painting and decorating.

Internal repairs.

Maintenance of adjoining open spaces.

Rechargeable repairs (cost of repairing wilful damage by tenants is recoverable). [256]

#### RECONCILIATION OF COSTING WITH FINANCIAL RECORDS

In the interests of sound finance it is essential that a complete reconciliation of departmental cost accounts should be effected with the financial accounts.

This reconciliation is secured by aggregate adjustment accounts which, in the cost ledgers, are credited with periodical totals of all postings in respect of stores, wages, establishment charges, etc., to the debit of the detailed cost accounts. [257]

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(h) The costing of housing construction activities became compulsory on local authorities with the advent of the Housing, Town Planning, etc., Act, 1919.

## EXPENSES OF ADMINISTRATION

See titles BOROUGH ACCOUNTS; COUNTY ACCOUNTS; RURAL DISTRICT COUNCIL ACCOUNTS; URBAN DISTRICT COUNCIL ACCOUNTS.

## CONCLUSION

Costing in the local government service has probably made more progress in the compilation of unit costs than in any other direction. The value of such published costs, however, is discounted heavily owing to variations in local conditions which are not reflected in the figures (*i*).

In some cases comparisons are disturbed by the inclusion in returns of revenue contributions to capital outlay. Gifts of lands and buildings affect the loan charges factor in other instances.

It is for this reason that a Central Costs Bureau has been suggested which could undertake the collection of more exhaustive data from all local authorities, and the further research necessary for the setting up of suitable standard costs. Such costs would permit of reliable conclusions being drawn as to the relative efficiencies of comparable services in different localities. Considerable time might elapse in completing the preliminary survey, but the ultimate economies would be considerable. The establishment expenses of such a bureau need not be excessive as much voluntary help would be forthcoming from the professional associations interested in such a development. A small permanent staff would suffice to carry out a programme of investigations.

An interesting commentary on costing methods in this country is provided in the recent report of the International City Managers Association (U.S.A.), entitled "Some Observations on Municipal Practices in European Cities." The report incorporates comments by investigators who made their visit with the object of examining, amongst other matters, costing methods. Whilst holding that there is room for improvement the reporters indicate clearly that in costing technique this country is well ahead of many continental countries.

In this connection the recent report of the Committee on Local Expenditure (Cmd. 4200) refers to the importance of costing and standard costs, more particularly in relation to public health services. The committee were impressed by the results achieved by the establishment of standardised costs in relation to the cleansing service, and urged consideration and inquiry with a view to the establishment of other standardised costs of health services, especially maintenance costs in public health institutions and the capital cost of such institutions. The committee stressed the advantages of central purchasing and standardisation of supplies, and, further, expressed the view that the function of the M. of H. in regard to costing should not be limited to the collection and publication of results (paras. 183 to 194 inclusive). [258]

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(*i*) In the preface to Part I. of the costing returns for the year ending March 31, 1934 (dated January, 1935), it is said that the "principal value" of costing returns is lost unless they are available for purposes of comparison to all local authorities with similar relevant functions. Stress is also laid in the covering letter on the importance of promptitude in submitting costing returns.

# COSTS

| PAGE                                    |       | PAGE                            |
|---|-------|---------------------------------|
| PUBLIC AUTHORITIES PROTECTION ACT, 1893 | - - - | PROVISIONAL ORDERS              |
| 114                                     | -     | 116                             |
| PROMOTION, ETC., OF BILLS               | - 115 | INQUIRIES - - - - - 116         |
|   |       | TAXATION OF COSTS - - - - - 116 |

*See also titles : ACTIONS BY AND AGAINST LOCAL AUTHORITIES ;  
BILLS, PARLIAMENTARY AND PRIVATE ;  
PUBLIC AUTHORITIES PROTECTION ACT.*

ON THE GENERAL QUESTION OF RELATIONS BETWEEN SOLICITORS AND CLIENTS,  
*See HALSLEY'S LAWS OF ENGLAND, VOL. 26, PP. 72 et seq., AND PP. 760 et seq.*

Costs incurred by public authorities in relation to non-contentious business usually depend on the enactment which governs the particular subject-matter. The costs in certain types of action brought against a public authority are dealt with in the Public Authorities Protection Act, 1893, and the costs of promoting and opposing Parliamentary Bills and Provisional Orders are now governed by the L.G.A., 1933.  
[259]

**The Public Authorities Protection Act, 1893.**—A public authority sued for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority, is entitled to costs taxed as between solicitor and client if both of the following conditions are fulfilled :

- (1) wherever judgment is obtained by the defendant (a) ; and
- (2) the judicial discretion is not exercised to the contrary.

With regard to (1), a judgment does not necessarily mean a judgment on the main issue. The plaintiff may obtain the costs of the action, but if the defendant succeeds on an issue by which the costs have been increased, and on which the plaintiff has been directed to pay the costs, the costs on that issue will be taxed as between solicitor and client (b). The grounds of defence appear to be immaterial (c). Dismissal of an action in the Chancery Division is a judgment obtained by the defendant (d), as are a consent order dismissing the action (e), and an order dismissing the action on merely technical grounds, e.g. for want of prosecution (f). Decisions of the Court of Appeal are not judgments within the Act (d) nor are decisions on interlocutory applications, or

(a) S. 1 (b) ; 18 Statutes 456.

(b) *Roberts v. Gwyrfai District Council*, [1899] 1 Ch. 588 ; 38 Digest 132, 970.

(c) *Newell v. Starkie* (1919), 89 L. J. (P. C.) 1 ; 38 Digest 119, 854.

(d) *Fielding v. Morley Corp.*, [1899] 1 Ch. 1 ; 1 Digest 6, 30. As to appeals, see the decision of the House of Lords in the same case, [1900] A. C. 133.

(e) *Shaw v. Herefordshire County Council*, [1899] 2 Q. B. 282 ; 38 Digest 131, 969.

(f) *Gilbert v. Gosport and Alverstoke Urban Council*, [1916] 2 Ch. 587 ; 38 Digest 132, 973.

the discontinuance of proceedings by the plaintiff. As to what classes of action are within the Act, see title PUBLIC AUTHORITIES PROTECTION ACT. A judgment need not show on its face that the action fell within the Act. An award of costs in such an action, without anything further being said, entitles the defendant to tax his costs as between solicitor and client (g).

With regard to (2) already mentioned, the Act of 1893 does not take away from the judge the power to deprive a successful defendant of costs in an action of the class contemplated by the Act, in a case in which it would otherwise be proper to do so (h). [260]

In an action for damages (i.) if tender of amends was made before action brought and the plaintiff does not recover more than the sum tendered; or (ii.) if money is paid into court in satisfaction of the plaintiff's claim and, on the action being proceeded with to judgment, the plaintiff does not recover more than the sum paid in; the defendant is entitled to solicitor and client costs from the date of tender or payment, and the plaintiff is entitled to no costs from such date (i).

There is no judicial discretion as to costs under this sub-section. Money paid into court under the sub-section must be paid in in satisfaction, and not with a denial of liability (k).

If, in the opinion of the court, the plaintiff has not afforded the defendant a sufficient opportunity of tendering amends before bringing the action, the defendant may be awarded solicitor and client costs (l).

The whole of so much of the Act of 1893 as relates to costs is of a penal nature, giving a privileged position in the recovery of costs to public authorities who are sued for acts done in the execution of their duties. These provisions must, therefore, not be extended to any case not expressly covered by the Act. Local authorities have large powers of interfering with private rights, which powers they exercise at the expense of the rates, and not of their own pockets. The legislature has thought it right that they should be protected in defending themselves from hostile actions and that a plaintiff who sues them should risk having to pay solicitor and client costs, but that privilege cannot be extended beyond the express words of the statute. [261]

**Promotion of and Opposition to Bills.**—The question of costs in relation to the promotion and opposition of Bills in Parliament by local authorities was before 1934 dealt with by the Borough Funds Acts, 1872 and 1903 (m). By the L.G.A., 1933, those Acts are repealed, except so far as they extend to London, and these subjects are now dealt with by Part XIII. of that Act. There are certain conditions laid down which are required to be carried out before a local authority have power to promote or oppose a Bill (n). Unless a Bill which is promoted is for the sole purpose of constituting a borough a county borough or extending the area of a county borough or for purposes incidental thereto, any expenses incurred in the promotion or opposition of a Bill under Part XIII. of the Act are costs which are liable to be taxed

(g) *North Metropolitan Tramways Co. v. L.C.C.*, [1898] 2 Ch. 145; 38 Digest 131, 966; *Bostock v. Ramsey U.D.C.*, [1900] 2 Q. B. 616; 38 Digest 131, 964.

(h) See *East v. Berkshire County Council* (1911), 76 J. P. 35; 38 Digest 131, 965, and the cases cited under (g), ante.

(i) S. 1 (c); 13 Statutes 456.

(k) *Smith v. Northleach R.D.C.*, [1902] 1 Ch. 197; 38 Digest 132, 976.

(l) S. 1 (d); 13 Statutes 456.

(m) 10 Statutes 559, 836.

(n) L.G.A., 1933, s. 254; 26 Statutes 443.

under the Parliamentary Costs Acts, 1847 to 1879 (*nn*), and must not in fact be charged to the funds of the local authority until they have been so taxed and allowed (*o*), and no payment must be made by a local authority to a member of that authority for acting as counsel or agent in promoting or opposing a Bill under Part XIII. of the Act (*p*). With reference to the activities of county councils under Part XIII. of the Act, any expenses so incurred are to be treated as expenses incurred for general county purposes unless determined by the County Council to be special expenses (*q*), and an R.D.C. may decide to raise any sum so incurred as special expenses instead of as general expenses (*r*).

There is, however, a saving clause that nothing in Part XIII. shall affect the existing right which any local authority may have to oppose a local or personal Bill which would, apart from the L.G.A., 1933, be exercisable by the authority (*s*). [262]

**Provisional Orders.**—The question of costs to be incurred for the purpose of promoting or opposing provisional orders, made by the Minister under the L.G.A., 1933, or any later Act, is now dealt with in that Act. By sect. 285 (2) of that Act the reasonable costs incurred by a local authority in promoting or opposing a provisional order and of the inquiry preliminary thereto or in supporting or opposing a Bill to confirm a provisional order, as sanctioned by the Minister, are deemed to be expenses properly incurred by such authority, and the authority have power to borrow for the purpose of defraying such costs (*t*). See also title PROVISIONAL ORDERS. [263]

**Inquiries.**—The costs of holding local inquiries are also dealt with in the L.G.A., 1933, and power is given to the Secretary of State, the M. of H., the M. of T. or any Board or Commissioners authorised by the Act to hold an inquiry, to charge such reasonable sum as may be determined for the services of any officer engaged in the inquiry, and any sum so certified must be paid by the local authority on whose behalf the inquiry is held (*u*), and the department may make orders as to the costs of such inquiry and the parties by whom the costs shall be paid and every such order shall be a rule of the High Court on the application of any party named in the order (*x*). With reference to county council inquiries, the costs incurred by a county council in relation to an inquiry shall, unless the county council otherwise determine, be paid by the council of the borough, district or parish, or by the parish meeting, on whose behalf the inquiry is held (*a*), and subject to that, expenses incurred by a county council in connection with an inquiry held by them under the L.G.A.; 1933, must be paid by the county council (*b*). See also title INQUIRIES. [264]

**Taxation of Costs.**—The taxation of local authorities' costs is now dealt with by sect. 242 of the Act of 1933 (*c*), which has been substituted for sect. 249 of the P.H.A., 1875 (*d*), the word "examine" having been substituted for the word "tax" which appears in the Act

(*nn*) 12 Statutes 481.

(*o*) L.G.A., 1933, s. 256 (1); 26 Statutes 445.

(*g*) *Ibid.*, s. 257 (1); *ibid.*, 445.

(*s*) *Ibid.*, s. 258 (1).

(*u*) *Ibid.*, s. 290 (4).

(*a*) *Ibid.*, s. 291 (1).

(*b*) *Ibid.*, s. 291 (2). The decision in *Middlesex C.C. v. Kingsbury U.D.C.*, [1909] 1 K. B. 554; 38 Digest 25, 111, is not applicable to the words of this section.

(*c*) 26 Statutes 436.

(*p*) *Ibid.*, s. 256 (2); *ibid.*

(*r*) *Ibid.*, s. 257 (2).

(*t*) *Ibid.*, s. 285 (2).

(*x*) *Ibid.*, s. 290 (5).

(*d*) 18 Statutes 730.

of 1875. The position is now that on the application of the council of a non-county borough or district to the clerk of the peace of the county in which the area is wholly or in part situate the clerk of the peace or his deputy must examine any bill of costs incurred by the council in respect of legal business performed on their behalf and the allowance of any sum on such examination shall be *prima facie* evidence of the reasonableness of the amount but not of the legality of the charge (*e*). The M. of H. hold that the costs of a local authority in promoting or opposing a bill or provisional order or in other Parliamentary proceedings should be taxed by the taxing officer of one of the Houses of Parliament (*f*), and they decline to accept as sufficient in such cases, unless the costs are trifling, a taxation by the clerk of the peace (*g*). It will be observed that the section only applies to bills in respect of legal business performed on behalf of the local authority. Consequently the costs of the solicitor to the vendor of land purchased by the local authority do not come within the section, even though such costs may be payable by the authority.

It is not the function of the clerk of the peace to tax the bill of costs as between the local authority and their solicitor (*h*), and it is thought that the word "examine" has been substituted for the word "tax" in the 1875 Act, for the reason that this word was misleading. It is to be observed that the taxation by the clerk of the peace is only *prima facie* evidence of the reasonableness of the charges and does not conclude the auditor, nor is it any evidence of retainer.

The question of whether items ought to be allowed as between the authority and the ratepayers is one for the auditor and not for the taxing officer (*i*).

The taxation of costs on conveyances is dealt with by sect. 83 of the Lands Clauses Consolidation Act, 1845 (*j*). If the promoters of the undertaking and the party entitled to costs do not agree as to the amount, the costs must be taxed by a taxing master of the Chancery Division of the High Court upon an order of the same court to be obtained upon petition by either of the parties, and the promoters of the undertaking must pay what the master certifies to be due in respect of such costs to the party entitled thereto, and the expense of taxing such costs is to be borne by the promoters of the undertaking, unless one-sixth part of the costs is disallowed, in which case the costs of taxation are to be borne by the party whose costs are so taxed (*k*).

It should be noted that Rule 11 of Schedule I., Part I. of the General Order under the Solicitors Remuneration Act, 1881 (*l*), does not apply to vendor's costs under this section (*m*). [265]

(*e*) L.G.A., 1933, s. 242; 26 Statutes 436. (*f*) *Ibid.*, s. 256.

(*g*) Cf. *Lurgan U.D.C. to Moore and Johnston*, [1906] 1 I. R. 599.

(*h*) See *Southampton Guardians v. Bell* (1888), 21 Q. B. D. 297; 42 Digest 168, 1738, and *In re Porter, Amphlett and Jones*, [1912] 2 Ch. 98; 33 Digest 19, 80.

(*i*) *In re Porter, Amphlett and Jones, supra*; 42 Digest 156, 1557.

(*j*) 2 Statutes 1141.

(*k*) Lands Clauses Consolidation Act, 1845, s. 83; 2 Statutes 1141.

(*l*) The Solicitors Remuneration Act, 1881, General Order No. 1 (1882); Sched. I., Part I.; 18 Statutes 916.

(*m*) *In re Stewart* (1889), 41 Ch. D. 494; 42 Digest 233, 2663. And see *In re Burdekin*, [1895] 2 Ch. 136; 42 Digest 234, 2667.

## COSTS IN CRIMINAL CASES

| PAGE  | PAGE   |
|---|--|
| COSTS IN CRIMINAL CASES ACT,<br>1908 - - - - - 118        | Regulations - - - - - 122                                    |
| General - - - - - 118                                     | Payment of Costs by Defendant<br>or Prosecutor - - - - - 123 |
| Costs Payable out of Local<br>Funds - - - - - 119         | SUMMARY JURISDICTION (APPEALS)<br>ACT, 1933 - - - - - 125    |
| Procedure - - - - - 120                                   | LONDON - - - - - 126   |
| Costs Payable under Poor<br>Prisoners Defence Act - - 121 |  |

*See also title : Costs.*

### COSTS IN CRIMINAL CASES ACT, 1908

**General.**—Various enactments regulating costs in indictable cases were consolidated by the Costs in Criminal Cases Act, 1908, and considerable changes were also made in the law by the Act. The expression “indictable offence” is defined in the Act (*a*) to include any offence punishable on summary conviction which under the Summary Jurisdiction Acts is deemed to be an indictable offence as respects the person charged, and “prosecutor” to include any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on.

The Act is to apply in the case of a person committed as an incorrigible rogue under the Vagrancy Act, 1824 (*b*), as if that person were committed for trial for an indictable offence, and in the case of any appeal under that Act as if the hearing of the appeal by the court of quarter sessions were the trial of an indictable offence (*c*). [266]

By sect. 10 (4) of the Criminal Justice Administration Act, 1914 (*d*), the Act is to apply as regards sending youthful delinquents to Borstal institutions as if the person were committed for trial for an indictable offence. [267]

By sect. 9 (3) the Act is not to apply in the case of an offence in relation to the non-repair or obstruction of any highway, public bridge or navigable river, and costs in any such case may be allowed as in civil proceedings as if the prosecutor or defendant were plaintiff or defendant in any such proceedings (*e*). By sect. 9 (5) the hearing of any case stated under the Crown Cases Act, 1848 (*f*), is deemed to be an appeal for the purposes of sect. 13 of the Criminal Appeal Act, 1907 (*g*) (which relates to the costs of appeal), and for the same purposes the person in relation to whose conviction the case is stated is

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(*a*) S. 9 (1); 4 Statutes 744. Sub-s. (2) of s. 9, referring to the Vexatious Indictments Act, 1859, is repealed by the Administration of Justice (Miscs. Provisions) Act, 1933; 26 Statutes 86.

(*b*) 12 Statutes 913.

(*c*) S. 9 (4); 4 Statutes 744.

(*d*) 11 Statutes 376.

(*e*) 4 Statutes 744.

(*f*) *Ibid.*, 518.

(*g*) *Ibid.*, 732.

deemed to be an appellant, and the provisions of the Act of 1908 giving power to direct the payment of the costs of the prosecution and defence are not to apply to the hearing of any case so stated.

By sect. 9 (6) of the Act of 1908, a reference to the payment of costs out of local funds under that Act is to be substituted for any reference to the payment of expenses in the case of an indictment for felony, or in cases of felony, or in the case of a misdemeanor under the Criminal Law Act, 1826 (*h*), or any like reference in sect. 1 of the Inebriates Act, 1899 (*i*), or in sect. 13 of the Criminal Appeal Act, 1907 (*k*), or in any other enactment.

By sect. 7, when a person has been committed for trial for an indictable offence and is not ultimately tried, the court to which he is committed has power to direct or order payment of costs under the Act of 1908 in the same manner as if the defendant had been tried and acquitted. [268]

By sect. 70 (v.) of the Solicitors Act, 1932 (*l*), nothing in that Act is to affect any of the provisions of the Costs in Criminal Cases Act, 1908. [269]

**Costs Payable out of Local Funds.**—By sect. 1 (1) of the Costs in Criminal Cases Act, 1908 (*m*), certain courts may in certain cases by an order direct the payment of the costs of the prosecution or defence, or both, out of the local funds of a county or county borough. These courts are: (1) a court of assize or a court of quarter sessions before which any indictable offence is prosecuted or tried; (2) a court of summary jurisdiction by which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, and (3) any justice or justices before whom a charge not dealt with summarily is made against any person for an indictable offence. Such justices are referred to in the Act as examining justices. These courts have also a discretion to disallow costs in a proper case (*n*).

The costs which may be so directed to be paid are, subject to the regulations of the Secretary of State referred to later, such sums as appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble or loss of time properly incurred in or incidental to the attendance and giving of evidence (*o*). The amount of such costs is to be ascertained as soon as practicable by the proper officer of the court (*p*). The costs allowed include the cost of supplying a copy of the indictment to the accused person (*q*), and the cost of a coroner's inquisition (*r*). There is a discretion in the court to allow costs on a higher scale than that usually allowed, but such an order will only be made when there are exceptional circumstances (*s*).

(*h*) 4 Statutes 450.

(*i*) 9 Statutes 963.

(*k*) 4 Statutes 732.

(*l*) 25 Statutes 830.

(*m*) 4 Statutes 739.

(*n*) *R. v. Ely JJ., Ex parte Mann* (1928), 93 J. P. 45; Digest (Supp.).

(*o*) S. 1 (2); 4 Statutes 739.

(*p*) *Ibid.* The proper officer would be the Clerk of Assize or the Clerk of the Peace as the case may be.

(*q*) Indictments Act, 1915, Sched. I., r. 13 (2); 4 Statutes 804. See ss. 5 and 6 of that Act (4 Statutes 800, 801) as to the question of costs when an indictment has to be amended or is defective or redundant.

(*r*) Indictments Rules, 1916, r. 4; S.R. & O., 1916, No. 323.

(*s*) *R. v. Studds* (1911), 75 J. P. 248; 15 Digest 615, 6428.

No expenses to witnesses, whether for the prosecution or defence, may be allowed at a court of assize or quarter sessions before which any indictable offence is prosecuted or tried, if the witnesses are witnesses to character only unless the court orders otherwise (*t*). [270]

**Procedure.**—As soon as the amount due to any person in respect of costs directed to be paid out of local funds by a court of assize or a court of quarter sessions has been ascertained, the proper officer must make out an order upon the treasurer of the county or county borough and deliver it to that person or to any person who appears to the proper officer to be acting on his behalf (*u*). As to the costs directed by a court of summary jurisdiction or by examining justices to be paid, where the amount is due for travelling or personal expenses in respect of attendance to give evidence, the proper officer must pay the amount forthwith to the person concerned; but in other cases must forward a certificate of the amount in the case of a committal to the proper officer of the court to which the defendant is committed, and in any other case to the clerk of the peace of the county or place for which the court or justices act (*a*). Any amount so paid in respect of attendance to give evidence is to be reimbursed to the proper officer of the court by the treasurer of the county or county borough out of the funds of which the sum is payable under the Act, and the treasurer is to be allowed any amount so reimbursed in his account (*b*). Where the certificate is forwarded to the officer of the court to which the defendant is committed, it must be laid before that court, and where forwarded to the clerk of the peace it must be laid before the next court of quarter sessions, and in both cases the court must consider the certificate and cause an order to be made on the treasurer of the county or county borough for the sum certified, or for any less amount which the court considers should have been allowed, in the circumstances, under the Act (*c*). Where a certificate is forwarded to the officer of a court to which a defendant is committed for trial, the officer must, where practicable, include the amount payable in respect of the costs so certified in the order for payment of any costs directed to be paid by the court to which the defendant is committed for trial. [271]

In the case of offences committed or supposed to have been committed in a county borough, whether the court directing the payment is held in the borough or not, costs are payable under the Act out of the borough fund or borough rate (*d*), and in the case of other offences are payable out of the county fund of the administrative county in which the offence is committed or is supposed to have been committed (*e*). Offences committed, however, within the jurisdiction of the Admiralty of England are to be deemed to have been committed in the place where the offender is prosecuted or tried, or in the County of London if he is tried at the Central Criminal Court. Any costs paid in the case of these offences out of the funds of any county or county borough are to be repaid out of moneys provided by Parliament (*e*).

(*t*) Costs in Criminal Cases Act, 1908, s. 1 (4); 4 Statutes 740.

(*u*) *Ibid.*, s. 2.

(*a*) *Ibid.*, s. 3 (1).

(*b*) *Ibid.*, s. 3 (2).

(*c*) *Ibid.*, s. 3 (3).

(*d*) The general rate fund of the borough was substituted for the borough fund by s. 10 of the R. & V.A., 1925; 14 Statutes 631.

(*e*) Costs in Criminal Cases Act, 1908, s. 4 (1); 4 Statutes 741.

Where an offence was committed in one county and the offender was apprehended in another, it was held that the fact that the authorities of the county where the offender was apprehended had elected to commit him for trial in that county and that he had been tried there, did not render the county liable to pay the costs of the prosecution as being the county in which the offence "is supposed to have been committed" (f). [272]

Sect. 14 (4) of the Criminal Justice Act, 1925 (g), which deals with cases in which committals or retrials are ordered at convenient assizes or courts of quarter sessions, provides that any costs payable in the case under the Costs in Criminal Cases Act, 1908, should in the first instance be paid in the same manner as if the offence had been committed in the county or county borough in which the offender is tried, but should be recoverable by the treasurer of that county or county borough from the treasurer of the county or county borough in which the offence was committed. [273]

The treasurer of any county or county borough on whom an order is made for payment of any sum under the Act of 1908 must, upon sight of the order, pay the sum specified out of the county fund or borough fund or rate as the case may be, to the person named in the order or his duly authorised agent, and the treasurer is to be allowed the sum in his accounts (h).

The council of every county and county borough must cause their treasurer, or some other person on his behalf, to attend at every court of assize or quarter sessions at which an order may be made under the Act, for the purpose of paying any order so made, and he is to remain in court during the sitting or until such a time as the court directs (i).

Any equitable adjustment for the purpose of meeting any change in the financial relations between any counties and county boroughs which may arise owing to the provisions of the Act may be made by agreement between the councils of the counties or boroughs concerned, and, in default of agreement by the Minister of Health (k). The Minister may at his option determine the matter as arbitrator or otherwise. If he decides to determine the matter as arbitrator, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade (l) are to apply. The Minister may hold a local inquiry for the purpose (m). [274]

Nothing in the Act of 1908 is to affect the operation of any enactment for the time being in force which provides for the payment of the costs of the prosecution or defence of an indictable offence out of any assets, money or fund other than local funds, or by any person other than the prosecutor or defendant (n). [275]

**Costs Payable under Poor Prisoners Defence Act.**—Sect. 1 (3) of the Poor Prisoners Defence Act, 1903, was repealed by the Poor Prisoners Defence Act, 1930, and is replaced by sect. 3 of the Act of 1930 (o).

(f) *R. v. L.C.C.*, [1914] 3 K. B. 310; 15 Digest 615, 6427.

(g) 11 Statutes 406.

(h) Costs in Criminal Cases Act, 1908, s. 4 (2); 4 Statutes 741.

(i) *Ibid.*, s. 4 (3).

(k) *Ibid.*, s. 4 (4).

(l) See ss. 30—32; 14 Statutes 184.

(m) S. 4 (4); 4 Statutes 742. As to inquiries, see s. 290 of the L.G.A., 1933;

26 Statutes 459.

(n) S. 8; 4 Statutes 744.

(o) 23 Statutes 26.

By that section, where a defence or a legal aid certificate has been granted in respect of any person, an order under sect. 1 of the Costs in Criminal Cases Act, 1908, is to be made, in the case of a defence certificate by the court of assize or of quarter sessions before which he is prosecuted or tried, and in the case of a legal aid certificate, by the court of summary jurisdiction before which or the examining justices before whom he is charged. For this purpose, a court of summary jurisdiction has power to make such an order whether or not the charge is for an indictable offence, and examining justices have power to make such an order whether or not the charge is dealt with summarily. Subject to the regulations made under the Act of 1908 (*p*), the costs directed to be paid by any such order include, in the case of a defence certificate, the fees of solicitor and counsel and the costs of a copy of the depositions, and in the case of a legal aid certificate, the fees of a solicitor, and in either case any other expenses properly incurred in carrying on the defence.

If a defence certificate has not been granted but at the trial the defence is undertaken by counsel at the request of the judge or chairman of the court, the counsel's fees may be included in the order directing the costs to be paid out of local funds under the Act of 1908 (*q*). **[276]**

**Regulations.**—Sect. 5 of the Act of 1908 (*r*) gives power to a Secretary of State to make regulations with respect to (i.) the rates or scales of payment of any costs which are payable out of local funds under the Act, and the conditions under which they may be allowed, (ii.) the manner in which an officer of the court making any payment is to be reimbursed, and (iii.) the form of orders, certificates and notices under the Act, and the furnishing of information when certificates are forwarded by officers of courts of summary jurisdiction or of examining justices. By sect. 10 (1) of the Act (*s*) any regulations governing allowances payable to prosecutors and witnesses in criminal prosecutions are to remain in force till new ones are made under sect. 5, and those made on June 14, 1904 (*t*), as amended by regulations of 1920, 1922 and 1932 (*u*), therefore still govern the subject.

Various forms were prescribed by orders of the Home Secretary under sect. 5 in the years 1908 and 1930 (*a*), to be used for the purposes of (iii.) above. The profession, trade or occupation of each prosecutor, witness or other person, is to be given, or the fact that he is without employment, and the reason for which each sum is allowed.

The regulations require the justices' clerk, or proper officer, to pay any allowance to the person named in the order or any person duly authorised on his behalf, and to obtain a receipt, either by signature on the order or on a memorandum which must be attached. On presentation of the order with receipt, the amounts are to be reimbursed to the justices' clerk by the treasurer of the county or county borough named in the order. Such reimbursement, however, may be made at intervals as directed by the council of the county or county borough, so long as the times fixed are such as make it possible for the amounts

(*p*) See *infra*, "Regulations."

(*q*) Poor Prisoners' Defence Act, 1930, s. 3 (3); 23 Statutes 27.

(*r*) 4 Statutes 742.

(*s*) *Ibid.*, 745.

(*t*) S.R. & O., 1904, No. 1219.

(*u*) S.R. & O., 1920, No. 354; 1922, No. 892; and 1932, No. 823.

(*a*) S.R. & O., 1908, No. 1001; and 1930, No. 1066. As to London, Chatham and Sheerness, see S.R. & O., 1908, No. 1235.

to be charged in the justices' clerk's account of fines and fees. For fees payable by the prosecutor to the justices' clerk or the clerk of the peace which may be allowed by the examining justices or court of summary jurisdiction as part of the costs payable under the Act, it is not necessary to use forms, but the fees should be entered in a book or schedule and certified in any convenient form.

Details of the amounts to various types of witnesses and to solicitors and counsel are given in the regulations. [277]

In 1930 and 1932, the Home Secretary made regulations (b) as to the rates and scales of payment to solicitor and counsel and the cost of a copy of the deposition for the defence of a prisoner to whom a certificate has been granted under the Poor Prisoners' Defence Act, 1930, or whose defence has been undertaken by counsel at the request of the presiding judge or chairman, and in 1930 (c) as to the forms to be used. [278]

By sect. 10 (b) of the Act of 1908 (d) it is directed that where, as regards the determination of the amount of any fees to be paid to counsel or solicitors or any other matter which might be, but was not, at the time of the passing of the Act, regulated by regulations made by the Secretary of State, regard was paid to any rates or scales of payment authorised by a court of quarter sessions under the practice then existing, those rates and scales are to have effect as if they were contained in regulations made by the Secretary of State. [279]

**Payment of Costs by Defendant or Prosecutor.**—The court by or before whom any person is convicted of an indictable offence, may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the examining justices, as taxed by the proper officer of the court (e). The court may, also, when it makes an order under the Probation of Offenders Act, 1907, further order that the offender shall pay such costs of the proceedings as they think reasonable (f). [280]

When the accused is under seventeen years of age, the parent or guardian may be ordered to pay costs (g). There is no power to inflict imprisonment in default of the payment of costs (h). Before an order is made, there should be some evidence that the defendant is in a position to pay (i), and an order may be discharged by the Court of Criminal Appeal on evidence of the appellant's want of means (k).

Orders of this kind are suspended pending appeal (l). When the Crown applied for the appellant to pay the costs of the appeal in the Court of Criminal Appeal it was pointed out that to order the payment

(b) S.R. & O., 1930, No. 1065 (which revoked S.R. & O., 1927, No. 638), and 1932, No. 823.

(c) S.R. & O., 1930, No. 1066.

(d) 4 Statutes 745.

(e) Costs in Criminal Cases Act, 1908, s. 6 (1); 4 Statutes 742.

(f) Criminal Justice (Amendment) Act, 1926, s. 1 (1), printed as s. 1 (3) of the Probation of Offenders Act, 1907, in 11 Statutes 366. This replaced s. 7 (2) of the Criminal Justice Act, 1925.

(g) Children and Young Persons Act, 1933, s. 55; 26 Statutes 205.

(h) *R. v. McCluskey* (1921), 15 Cr. App. R. 148; 15 Digest 615, 6431.

(i) *R. v. Pottage* (1922), 17 Cr. App. R. 33; 15 Digest 615, 6430.

(k) *R. v. Howard* (1910), 6 Cr. App. R. 17; 15 Digest 615, 6429.

(l) Criminal Appeal Rules, r. 11; S.R. & O., 1908, No. 227.

of such costs would be to vary the sentence, which could not be done in a case where no appeal as to sentence had been made (*m*). Where, however, there was an appeal against a sentence, the court reversed an order that the appellant should pay costs "because we do not want him to be in such circumstances when he comes out of prison, that he would be driven to commit another crime" (*n*). [281]

By sect. 6 (2) of the Costs in Criminal Cases Act, 1908 (*o*), where a person is acquitted on any indictment or information by a private prosecutor for (i.) the publication of a defamatory libel, (ii.) any offence against the Corrupt Practices Prevention Act, 1854 (*p*), (iii.) the offence of any corrupt practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (*q*), (iv.) on an indictment for an offence under the Merchandise Marks Acts, 1887 to 1894 (*r*), or (v.) in a case where the person acquitted has not been committed to or detained in custody or bound by recognisance to answer the indictment, the court before whom the person acquitted is tried may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the examining justices, as taxed by the proper officer of the court (*s*). By para. 3 of the Second Schedule to the Administration of Justice (Mises. Provisions) Act, 1933 (*t*), this provision of the Act of 1908 is extended to all cases where the person acquitted has not been committed for trial.

Where a charge made against any person for any indictable offence, not dealt with summarily, is dismissed by the examining justices, they may, if they are of opinion that the charge was not made in good faith, order the prosecutor to pay the whole or any part of the costs incurred in or about the defence (*u*). If the amount ordered to be paid, however, exceeds £25 the prosecutor may appeal against the order to a court of quarter sessions in the manner provided by the Summary Jurisdiction Acts, and no proceedings can be taken upon the order until either the time within which the appeal can be made has elapsed without an appeal being made, or, in case an appeal is made, until the appeal is determined or ceases to be prosecuted (*u*). Justices have power to state a case on the question whether their order was rightly made under this subsection (*a*).

These orders for the payment of costs by the person convicted or by the prosecutor may be made in addition to an order directing payment of costs out of local funds. Where an order is made directing payment out of local funds, the costs are primarily payable out of those funds, but notice of any order as to payment by the person convicted or the prosecutor must be sent to the council of the county or county

(*m*) *R. v. Reynolds* (1910), 6 Cr. App. R. 28; 15 Digest 615, 6432.

(*n*) *R. v. Jones* (1921), 16 Cr. App. R. 52; 15 Digest 615, 6433.

(*o*) 4 Statutes 743. The words "presented to a grand jury under the Vexatious Indictments Act, 1859," are repealed by the Administration of Justice (Mises. Provisions) Act, 1933.

(*p*) 7 Statutes 399.

(*q*) *Ibid.*, 465.

(*r*) 19 Statutes 832 *et seq.*

(*s*) Costs in Criminal Cases Act, 1908, s. 6 (2); 4 Statutes 743. As to the position when the Director of Public Prosecutions takes up a case after the private prosecutor has been bound over to prosecute, see *Stubbs v. Director of Public Prosecutions* (1890), 24 Q. B. D. 577; 15 Digest 614, 6425.

(*t*) 26 Statutes 84.

(*u*) Act of 1908, s. 6 (3); 4 Statutes 743.

(*a*) *R. v. Allen*, [1912] 1 K. B. 365; 15 Digest 615, 6434.

borough from whose funds they are payable (*b*) and any order as to costs primarily paid out of local funds may be enforced by the council out of whose funds they have been paid (*c*). As to other costs, they may be enforced by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in the manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the court directs (*d*). [282]

#### SUMMARY JURISDICTION (APPEALS) ACT, 1933 (*e*)

By sect. 2 (1) of this Act any person who has been convicted of an offence by a court of summary jurisdiction and desires to appeal to quarter sessions against the conviction or the sentence, but who has not sufficient means to enable him to obtain legal aid for the purpose, may make an application for free legal aid. The application may be made to the court by whom he was convicted or to any court of summary jurisdiction acting for the same petty sessional division or place. Where a person so convicted has given notice of appeal to quarter sessions the other party to the appeal, if he has not sufficient means to enable him to obtain legal aid for the purpose of resisting the appeal, may make an application for free legal aid to any court of summary jurisdiction acting for the division or place.

By sect. 2 (2) of the Act, the court to whom the application under sect. 2 (1) is made, may grant an appeal aid certificate if they think it is desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of his appeal or in resisting the appeal. If the court refuse to grant an appeal aid certificate the applicant may make the same application to the court to whom the appeal lies, who would then have a similar power of granting such a certificate.

By sect. 2 (5), where an appeal aid certificate has been granted, an order is to be made by the court by whom the appeal is heard directing the costs of the holder of the certificate to be paid out of the general rate fund of the county borough where the court of summary jurisdiction by whom the appellant was convicted was a court acting for the county borough, and in any other case out of the county fund. These costs are to be fixed by or ascertained in accordance with rules made under the section (*f*). Where the appeal is abandoned the order may be made by any court before whom the appeal might have been heard.

By sect. 2 (6), as soon as the amount of the costs has been ascertained the clerk of the peace is to send to anybody to whom any sum is due an order on the county or county borough treasurer as the case may be, who is to comply with the order and is to be allowed the sum paid by him in his accounts. If an order for payment of costs has been made against the party to the appeal, other than the one to whom the appeal aid certificate has been granted, the council of the county

(*b*) Costs in Criminal Cases Act, 1908, s. 6 (4); 4 Statutes 743.

(*c*) *Ibid.*, s. 6 (5).

(*d*) *Ibid.*

(*e*) 26 Statutes 545.

(*f*) See Summary Jurisdiction Appeals (Counsel and Solicitor) Rules, 1933, and Costs of Poor Appellants and Respondents (Summary Jurisdiction Appeals) Rules, 1933; S.R. & O., 1933, Nos. 1118, 1119.

or county borough, out of whose funds payment has been made, may enforce the order so far as it relates to any costs paid out of those funds as if it had been made in their favour. By sect. 4 (3), if, on the abandonment of an appeal, a court of summary jurisdiction has ordered the appellant to pay costs, a council entitled, as described above, to recover costs may recover the costs so ordered to be paid summarily as a civil debt and in no other manner; and by sect. 5 (2), costs ordered by quarter sessions to be paid on an appeal may also be recovered summarily as a civil debt and in no other manner by such a council.

By sect. 2 (9), the provisions of sect. 2 are to apply in relation to appeals under sect. 7 (1) of the Criminal Justice Act, 1925 (g), as they apply in relation to appeals against convictions. [283]

#### LONDON

The provisions already referred to with respect to costs in criminal cases apply equally to London. The Central Criminal Court is a "Court of Assize" for the purpose of the Costs in Criminal Cases Act, 1908 (h). [284]

(g) 11 Statutes 399.

(h) See Interpretation Act, 1889, s. 13 (4); 18 Statutes 996.

## COTTAGE GARDENS

*See DERATING.*

## COTTAGE HOLDINGS

| PROVISION BY COUNTY AND<br>COUNTY BOROUGH COUNCILS — | PAGE | DELEGATION TO BOROUGH OR<br>DISTRICT COUNCIL — | PAGE |
|--|------|--|------|
| SALE OR LETTING TO A SMALL<br>HOLDER — — — —         | 126  | LONDON — — — —                                 | 129  |

*See also titles : ALLOTMENTS ;  
ALLOTMENTS COMMITTEES ;  
SMALL HOLDINGS.*

**Provision by County and County Borough Councils.**—The provision of cottage holdings is now authorised by sect. 12 of the Agricultural Land (Utilisation) Act, 1931 (a), which applies to cottage holdings all the provisions with respect to small holdings of the Small Holdings and Allotments Acts. By sect. 20 of the Act of 1931 (b) a cottage holding is defined as "a holding comprising a dwelling-house, together

with not less than forty perches and not more than one acre of agricultural land which can be cultivated by the occupier of the dwelling-house and his family." The definition of "cottage holding" incorporated in sect. 12 of the Small Holdings and Allotments Act, 1926 (c) (which included holdings with a dwelling-house and not more than three acres of agricultural land), is repealed (d), but cottage holdings provided under the repealed sect. 12 of the Act of 1926 are to continue to be treated as cottage holdings for the purposes of the modification of sect. 6 of the Small Holdings and Allotments Act, 1926, made by sect. 12 of the Act of 1931. This can extend only to cottage holdings provided by a county council, as a county borough council could not provide cottage holdings under the Act of 1926. The restriction in sect. 12 of the Act of 1926, that cottage holdings could only be provided for sale to *bona fide* agricultural labourers or to persons engaged in rural industry, no longer applies to either pre-1931 or post-1931 cottage holdings. Cottage holdings did not exist as a separate class prior to the passing of the Act of 1926. [285]

Under sect. 12 of the Act of 1931, a cottage holding may now be provided by a county council, or by a county borough council (e), for a person desiring to buy or lease a cottage holding, who in the opinion of the council is a suitable person, and who satisfies the council that :

- (a) he will reside permanently in the dwelling-house comprised in the holding ; and
- (b) he has the intention, knowledge and capital to cultivate satisfactorily the land forming part of the cottage holding. [286]

**Sale or Letting to a Small Holder.**—The sale of a cottage holding to a small holder is to be made in consideration of a terminable annuity of an amount equal to the full fair rent (f) of the holding for a period of 60 years, or, at the option of the purchaser, for a shorter period, provided the capital value of the annuity is equivalent to the capital value of an annuity for 60 years (g). The first instalment must be paid on completion of the purchase, and the balance is secured by a charge (h) on the holding in favour of the vendor council ; the amount of the full fair rent is to be determined by the council. Payments (except of the instalment due on completion) may be postponed for not more than five years in consideration of capital expenditure by the purchaser which increases the value of the holding. [287]

The sale or letting of a cottage holding is subject to the conditions imposed by sect. 6 of the Act of 1926 (i) ; in the case of a sale the conditions apply for a term of 40 years from the date of sale, and there-

(c) 1 Statutes 329.

(d) Agricultural Land (Utilisation) Act, 1931, s. 12 (2) (24 Statutes 59), which repeals Small Holdings and Allotments Act, 1926, s. 12.

(e) The definition of "county council" in relation to small holdings includes the council of a county borough ; see Small Holdings and Allotments Act, 1908, s. 61 (1) ; 1 Statutes 278.

(f) "Full fair rent" means the rent which a tenant might reasonably be expected to pay for the holding if let as such and the landlord undertook to bear the cost of structural repairs (Small Holdings and Allotments Act, 1926, s. 2 (6) ; 1 Statutes 324). If tithe or land tax exists, their redemption should be considered before embarking on a cottage holdings scheme where sales are contemplated.

(g) Act of 1926, s. 5 ; 1 Statutes 325.

(h) It is convenient to take a charge by deed by way of legal mortgage (Law of Property Act, 1925, s. 87 ; 15 Statutes 265).

(i) 1 Statutes 325.

after so long as the holding remains charged with the annuity. The conditions (*k*) are :

- (1) due payment of instalments of the annuity;\*
- (2) no division, sale, assignment, letting or sub-letting without the consent of the council;
- (3) cultivation according to the rules of good husbandry (*l*), and use for agriculture only;
- (4) not more than one dwelling-house to be erected on the holding, unless the council consider that additional accommodation is required for proper cultivation;
- (5) any dwelling-house must comply with the requirements of the council for securing healthiness and freedom from over-crowding;
- (6) the dwelling-house and buildings are to be kept in repair and insured against fire by the owner;\*
- (7) no dwelling-house or building on the holding is to be used for the sale of intoxicating liquors;
- (8) further restriction against the erection of a dwelling-house, if the council consider that one ought not to be erected.

Sect. 12 of the Act of 1931 (*m*) adds the further condition (in the case of a cottage holding) that the owner or occupier shall reside permanently in the dwelling-house comprised in the holding (*n*).

Sect. 6 (1) of the Act of 1926 allows the council to relax or dispense with any of the above conditions, subject to the consent of the Minister of Agriculture when the holding is one in respect of which a contribution is payable by him (*o*).

On a breach of any of the foregoing conditions, the council may give notice to remedy the breach (if it is capable of remedy), and may then either take possession of the holding or order the sale thereof without taking possession (*ibid.*, sect. 6 (2)). [288]

If on the decease of the owner, while the holding is subject to the conditions of sect. 6 of the Act of 1926, the holding would, by reason of any devise, bequest, intestacy or otherwise, become sub-divided, the council may require the holding to be sold within twelve months after the death to some one person (*p*). If default is made in so selling, the council may take possession or order the sale of the holding without taking possession (*ibid.*). [289]

For recovery of possession, sale, and the disposal of the proceeds of sale, see sects. 7 and 8 of the Small Holdings and Allotments Act, 1926 (*q*), and title **SMALL HOLDINGS**. [290]

(*k*) Conditions marked \* apply only in the case of a sale; see Small Holdings and Allotments Act, 1926, s. 6 (4); 1 Statutes 326.

(*l*) For the rules of good husbandry, see Agricultural Holdings Act, 1923, s. 57; 1 Statutes 113.

(*m*) 24 Statutes 58.

(*n*) This condition also applies to cottage holdings provided under the Small Holdings and Allotments Act, 1926, s. 12; 1 Statutes 329.

(*o*) As to M. of A. contributions, see *ibid.*, s. 2; *ibid.*, 323; as amended by the Second Schedule to the Act of 1931; 24 Statutes 67. Where contributions from the Small Holdings and Allotments Account are made, the Minister may impose conditions.

(*p*) Small Holdings and Allotments Act, 1926, s. 6 (3); 1 Statutes 326. *Sembly*, a *bona fide* sale is meant, and not e.g. to some person nominated by the council.

(*q*) 1 Statutes 327, 328.

**Delegation to Borough or District Council.**—Under sect. 9 of the Small Holdings and Allotments Act, 1926 (*r*), a county council may arrange with the council of any borough, or district in the county for the exercise by such council, as agents for the county council, of powers in relation to (*inter alia*) cottage holdings, and the borough or district council may undertake to pay the whole or any part of any loss incurred by the county council in relation to the holdings. Any such expenses of the borough or district council are to be defrayed as part of the general expenses of that council in the execution of the P.H.As. But a proviso to sect. 9 of the Act of 1926 prohibits a borough or district council from submitting to the Minister of Agriculture proposals and estimates for the purpose of obtaining contributions under sect. 2 of the Act from the Small Holdings and Allotments Account. [291]

A council may make advances to the owners of (*inter alia*) cottage holdings provided by or purchased with the assistance of the council, for the construction, alteration, or adaptation of houses and farm buildings, or may guarantee in similar cases the repayment to building societies, or to societies incorporated under the Industrial and Provident Societies Acts, 1893 to 1913, of advances for the like purposes (*s*). For the safeguards and securities in connection with such loans and guarantees, see sect. 14, *ibid.*, and title **SMALL HOLDINGS**.

As to the mode of acquiring land, finance, management, committees of local authorities, and generally, see the title **SMALL HOLDINGS**. [292]

A county or county borough council must apply to be registered as proprietors under the Land Registration Act, 1925, of land purchased for small holdings; see sect. 11 of the Small Holdings and Allotments Act, 1926 (*t*). This enactment is applied to cottage holdings. As to registration and dealings with such land, see the Land Registration Act, 1925, s. 100 (*u*), and the Land Registration (England) Rules, 1925, r. 63 (*a*).

**London.**—There are no cottage holdings in the administrative county. [293]

(*r*) 1 Statutes 328.

(*s*) Small Holdings and Allotments Act, 1926, s. 14; 1 Statutes 330; as amended by the Second Schedule to the Agricultural Land (Utilisation) Act, 1931; 24 Statutes 67.

(*t*) 1 Statutes 328.

(*u*) 15 Statutes 495.

(*a*) *Ibid.*, 580.

## COTTAGE HOSPITALS

*See VOLUNTARY HOSPITALS AND INSTITUTIONS.*

## COTTON CLOTH FACTORIES

*See FACTORIES AND WORKSHOPS.*

## COUNCILLORS

*See BOROUGH COUNCILLOR ; COUNTY COUNCILLOR ; DISTRICT COUNCILLOR ; PARISH COUNCILLOR.*

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## COUNSEL, EMPLOYMENT OF

|                               | PAGE |  | PAGE |
|-------------------------------|------|--|------|
| GENERAL - - - - -             | 130  | PROMOTION OF BILLS - - -                                 | 132  |
| BARRISTERS AS OFFICERS - - -  | 130  | COMPENSATION FOR THE COM-<br>PULSORY ACQUISITION OF LAND | 133  |
| BARRISTER MEMBERS OF COUNCILS | 131  | RIGHT TO INSPECT COUNSEL'S<br>OPINION - - - - -          | 133  |
| INQUIRIES - - - - -           | 132  |  |      |

---

*See also titles :*

|   |  |
|---|--|
| ACTIONS BY AND AGAINST LOCAL<br>AUTHORITIES ;<br>COMPENSATION ON ACQUISITION OF<br>LAND ; | COSTS ;<br>COSTS IN CRIMINAL CASES ;<br>INQUIRIES ;<br>OFFICERS OF LOCAL AUTHORITIES . |
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FOR THE GENERAL LAW RELATING TO COUNSEL, *See HALSLEY'S LAWS OF ENGLAND* (2ND ED.), VOL. 2, TITLE "BARRISTERS."

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**General.**—By sect. 276 of the L.G.A., 1933 (*a*), where a local authority think it expedient for the promotion or protection of the interests of the inhabitants of their area, they may prosecute or defend any legal proceedings. In general, therefore, a local authority, like any other corporate body, may employ counsel where necessary, and like other clients are bound by the rules of court and by the etiquette of the Bar. By sect. 277 of the L.G.A., 1933 (*b*), a local authority may by resolution authorise any of their members or officers, either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction or to appear on their behalf before a court of summary jurisdiction in any proceedings instituted by them or on their behalf or against them. The words here are "authorise," not "employ," and it would appear that a member of a council who is a barrister might, in common with any other member, be so authorised, but as he would be acting in his capacity of member of the council and not as a member of his profession there would be no question of fee. The question of the authorisation under this provision of officers who are not barristers is dealt with in the title OFFICERS OF LOCAL AUTHORITIES. [294]

**Barristers as Officers.**—It is customary, at any rate among the larger local authorities, to insist that their clerk should be a barrister or solicitor, although in many cases legal officers are also appointed. The L.G.A., 1933, merely provides that "fit" persons are to be appointed to the office of clerk or town clerk (*c*). The matter was considered by the Departmental Committee on the Qualifications,

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(*a*) 26 Statutes 452.

(*b*) *Ibid.*

(*c*) Ss. 98, 106, 107 ; 26 Statutes 358, 361, 362.

Recruitment and Promotion of Local Government Officers, who on p. 32 of their Report (*d*) held that a legal qualification should not always be required when a local authority are appointing their clerk.

The functions of the clerk, if a barrister, and the question of the payment of fees, are usually dealt with in the contract of service. In regard to his position as a member of the Bar, decisions have been given by the Bar Council as follows (*e*), and are published in their Annual Statement (A.S.):

(i.) A barrister official in charge of the administrative department of a local authority is not entitled to do any work for that authority in his capacity as a barrister; he may, however, do work which can by statute or otherwise be done by a person who is not a barrister.

(ii.) A barrister holding the office of town clerk or clerk to any similar public body should not practice at the Bar (*f*), although he may appear for such body on certain occasions (*g*).

(iii.) A barrister clerk to a county council is in the same position as any other clerk who is not a solicitor. He can take the opinion of counsel without the intervention of a solicitor in cases where no litigation is pending or contemplated. He may not instruct counsel direct in judicial proceedings. He may instruct counsel direct in non-judicial proceedings, such as local government inquiries, but the practice is not desirable (*h*).

(iv.) A barrister is precluded from accepting an appointment under the direction of the solicitor of a municipal corp. (who is an admitted solicitor) (*i*).

As to barristers in other positions in the local government service:

(v.) A barrister in the permanent employment of a local education authority should not appear as counsel in local courts in such cases as school attendance prosecutions under the Education Acts, prosecutions by the Society for the Prevention of Cruelty to Children, or a claim for compensation to children injured in school (*k*).

(vi.) A barrister clerk of an old age pensions committee should not appear in cases where the appellants have been before his pensions committee for advice or otherwise (*l*). [295]

**Barrister Members of Councils.**—The position of a barrister member of a council, in relation to his council, is generally dealt with in the standing orders of the council, and as regards the etiquette of the Bar the following decisions have been given by the Bar Council:

(i.) A barrister should not appear either for or against a county council or other local authority of which he is a member (*m*), nor should he appear before a committee of such a body (*n*).

(ii.) It is not in accordance with etiquette that a barrister, who is a chairman of a highway committee, should appear as counsel before the magistrates, although instructed by the clerk of the council (*o*). [296]

(*d*) 32—306. Issued January, 1934. Price 1s. 6d. It is understood that the Council of the Law Society and the Society of Town Clerks dissented from the view taken by the Committee.

(*e*) Set out in the Annual Practice, 1935, p. 2660.

(*f*) A.S., 1896–97, *ibid.*, p. 2662.

(*h*) A.S., 1925, *ibid.*, p. 2659.

(*k*) A.S., 1914, *ibid.*, p. 2660.

(*m*) A.S., 1907–8, Annual Practice, 1935, p. 2661.

(*n*) A.S., 1897–98, *ibid.*, p. 2661.

(*o*) A.S., 1898–99, *ibid.*, p. 2661.

(*g*) A.S., 1925, *ibid.*, p. 2662.

(*i*) A.S., 1914, *ibid.*, p. 2661.

(*l*) A.S., 1928, *ibid.*, p. 2671.

**Inquiries.**—The employment of counsel by local authorities is necessary not only in regard to litigation, but also in the numerous local inquiries directed by Government departments. In sect. 290 of the L.G.A., 1933 (*p*), the procedure in such inquiries is set out, and under sect. 285 (1) of the Act (*q*), a local inquiry is usually necessary where the M. of H. is applied to for a provisional order. By sect. 168 (*r*), a local inquiry is to be held by one or more members or by an officer of the county council, where a parish council represent to the county council that they are unable to purchase by agreement and on reasonable terms suitable land for a purpose for which the parish council may acquire land. By sub-sect. (5) of this section, the person holding the inquiry must not hear counsel or expert witnesses unless the M. of H. so directs. Para. 5 of Part I. of the First Schedule to the Small Holdings and Allotments Act, 1908 (*s*), contains a similar provision, except that the M. of A. & F. is substituted for the M. of H., with regard to arbitrations for the assessment of compensation for the compulsory acquisition of land under that Act, and sect. 17 (3) of the amending Act of 1926 (*t*) declares that the Acquisition of Land (Assessment of Compensation) Act, 1919 (*u*), has not affected the power of the M. of A. to give a direction under the earlier provision with respect to the hearing of counsel.

The inference from these provisions is that at other inquiries counsel may be heard, and the question arises, therefore, as to whether counsel must be heard, if the parties so desire. In *R. v. Williamson* (*a*), a case was decided on the words of a section of a local Act, identical with sect. 6 (2) of the Gas Regulation Act, 1920 (*b*), giving gas undertakers the right, if they thought themselves aggrieved by any report of a gas examiner, to appeal to the chief gas examiner, who might confirm, amend or annul the report *after hearing the parties*, and POLLOCK, B., said: “I have no doubt whatever that the gas company desire to assert their right to be heard by counsel. I think, however, there is no such absolute right, and that the chief gas examiner has a discretion in the matter.”

Decisions as to appearances at local inquiries have been given by the Bar Council as follows, and are published in its Annual Statement (A.S.):

(i.) There is no objection to a K.C. appearing without a junior at an inquiry if held before an inspector of the M. of H. (*c*).

(ii.) A barrister should not appear at a local government inquiry to be held by an official of the M. of H. unless instructed by a solicitor or a clerk to a local authority (*d*).

(iii.) A barrister who has presided as a special commissioner at an inquiry held under sect. 57 of the L.G.A., 1888 (*e*), should not appear as counsel on behalf of the county council or other party at a later inquiry held to review the order made upon the first inquiry (*f*). [297]

**Promotion of Bills.**—By sect. 253 of the L.G.A., 1933 (*g*), any council of a county, borough or district may promote or oppose any

(*p*) 26 Statutes 459. See also title INQUIRIES.

(*q*) *Ibid.*, 456.

(*r*) *Ibid.*, 398.

(*s*) 1 Statutes 280.

(*t*) *Ibid.*, 332.

(*u*) 2 Statutes 1176.

(*a*) (1890), 55 J. P. 101; 3 Digest 320, 67.

(*b*) 8 Statutes 1284. The sub-section is amended by Second Schedule to the Gas Undertakings Act, 1934.

(*c*) A.S., 1928, Annual Practice, 1935, p. 2667.

(*d*) A.S., 1933, *ibid.*, p. 2659.

(*e*) 10 Statutes 732. Repealed by L.G.A., 1933.

(*f*) A.S., 1929, Annual Practice, 1935, p. 2656.

(*g*) 26 Statutes 443. See title BILLS, PARLIAMENTARY AND PRIVATE.

local or personal Bill in Parliament. This is highly technical work for which counsel is usually employed if the Bill is actively opposed in Committee. By sect. 256 (2) of the Act (*h*) no payment may be made by a council to one of their members for acting as counsel or agent in promoting or opposing a local or personal Bill. [298]

**Compensation for the Compulsory Acquisition of Land.**—By sect. 1 of the Acquisition of Land (Assessment of Compensation) Act, 1919 (*i*), where land is authorised to be acquired compulsorily by any local authority under any statute, any question of disputed compensation and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease is to be referred to and determined by an official arbitrator under that Act (*k*). By sect. 5 (4) of the Act (*l*) costs of the arbitration are in the discretion of the official arbitrator, who may in any case disallow the cost of counsel. [299]

**Right to Inspect Counsel's Opinion.**—The documents which may be inspected by a local government elector under sect. 283 of the L.G.A., 1933 (*m*), would clearly not include an opinion of counsel obtained by the local authority. Even under the repealed and wider provision in sect. 58 (5) of the L.G.A., 1894 (*n*), the court refused to grant a mandamus to enforce the elector's right of inspection when he sought to inspect an opinion of counsel upon a matter in which the elector had threatened litigation against the council (*o*). Similarly the courts have refused to grant mandamus to enforce the common law right of inspection of the documents of a council by a member of the council where they are satisfied that the councillor is inspired by the indirect motive of assisting a person who is engaged in litigation with the council (*p*). [300]

(*h*) 26 Statutes 445.

(*i*) 2 Statutes 1176.

(*k*) See title COMPENSATION ON ACQUISITION OF LAND.

(*l*) 2 Statutes 1180.

(*m*) 26 Statutes 455.

(*n*) 10 Statutes 814.

(*o*) *R. v. Godstone R.D.C.*, [1911] 2 K. B. 465; 33 Digest 101, 683. See also *R. v. Bradford-on-Avon R.D.C.* (1908), 72 J. P. 348; 33 Digest 101, 684.

(*p*) *R. v. Hampstead B.C.* (1917), 33 T. L. R. 157; 13 Digest 302, 341.

## COUNTY ACCOUNTANT

*See FINANCIAL OFFICER.*

# COUNTY ACCOUNTS

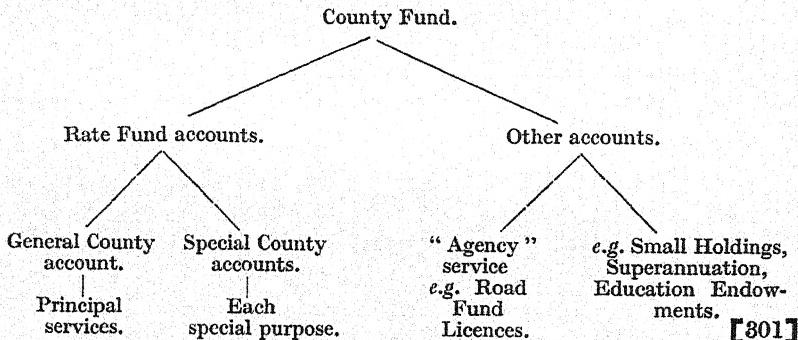
| PAGE  |             | PAGE   |             |
|---|-------------|--|-------------|
| <b>GENERAL DESCRIPTION</b>                                  | 134         | <b>Cash Book</b>   | — — — — 139 |
| General and Special County Ac-<br>counts                    | — — — — 134 | <b>Subsidiary Books</b>  | — — — — 140 |
| Other Separate Accounts                                     | — — — — 135 | (i.) <i>Register of Periodical Re-<br/>ceipts and Payments</i> | — — — — 140 |
| Motor and Local Taxation<br>Licences                        | — — — — 135 | (ii.) <i>Debtors' Register</i>                                 | — — — — 140 |
| Small Holdings  | — — — — 136 | (iii.) <i>Contracts Ledger</i>                                 | — — — — 140 |
| Financial Year  | — — — — 136 | (iv.) <i>Creditors' Ledger</i>                                 | — — — — 141 |
| "Receipts and Payments" or<br>"Income and Expendi-<br>ture" | — — — — 136 | <b>The Ledger</b>  | — — — — 141 |
| Forms of Account  | — — — — 137 | <b>Balance Sheet</b>   | — — — — 142 |
| Inspection, etc., of Accounts                               | — — — — 137 | <b>Abstract of Accounts</b>                                    | — — — — 143 |
| <b>METHODS OF ACCOUNTANCY</b>                               | — — — — 138 | <b>Suggested Forms</b>   | — — — — 143 |
| Ordering of Goods   | — — — — 138 | <b>VARIOUS ACCOUNTANCY MATTERS</b>                             | 145         |
| Payment of Accounts   | — — — — 138 | Accrued Income and Charges                                     | — — — — 145 |
| Petty Cash  | — — — — 139 | Central Establishment Charges                                  | — — — — 145 |
|   |             | Costing  | — — — — 145 |
|   |             | <b>LONDON</b>  | — — — — 146 |

The titles in this work bearing on the subject of County Accounts are very numerous. A complete list of them with some description of their scope and inter-  
action will be found under the title ACCOUNTS OF LOCAL AUTHORITIES.

## GENERAL DESCRIPTION

Under sect. 181 of the L.G.A., 1933 (a), a county council has one composite fund called "the County Fund." All receipts, whether for general or special county purposes, are to be carried to this fund and all liabilities, whether for general or special county purposes, are to be discharged from it.

An outline of county council accounts may be indicated in the form of a diagram as follows :



**General and Special County Accounts.**—As part of the county fund, separate accounts are to be kept of financial transactions, (i.) on

general county account, and (ii.) on special county account. The general county account relates to expenditure chargeable over the whole of the administrative county (b). A special county account relates to expenditure chargeable on part only of an administrative county by reason of the exemption of one or more boroughs or districts from contribution to a particular county service (c). Each special county purpose is to form the subject of a separate account, except that one account suffices where the area of charge for any two or more special county purposes is the same (d).

In every county a general county account will necessarily be kept, but the existence of special county accounts and their number depend on the autonomy possessed by the constituent borough and district councils. Expenditure may be "general" in one county and "special" in another county in respect of the same service. In the majority of counties, however, the presence of autonomous local education authorities renders necessary at least one special county account, *i.e.* for elementary education. In addition special county accounts may be found in respect of one or more of the following typical services, viz. Police; Administration of Justice; Public Libraries; Weights and Measures; Shops Acts; Land Drainage; Town and Country Planning; and Diseases of Animals.

A convenient procedure, which avoids the necessity of keeping a separate special county account, is embodied in sect. 3 of the Maternity and Child Welfare Act, 1918 (e). Notwithstanding that within a county there may be an autonomous authority for the purposes of this Act, the county council may charge expenditure in respect of maternity and child welfare as a general county purpose, subject to the condition that a refund is made to any borough or district council, who are a maternity and child welfare authority, of the amount raised by the county council in that borough or district for such service. A refund of this description is known as a "rateable refund." In a number of cases, however, where advantage might be taken of this provision, the county council prefer to regard their expenditure on maternity and child welfare as a special county purpose.

In passing, it should be noted that by virtue of the L.G.A., 1933 (f), all expenses incurred by a county council under any enactment passed after June 1, 1934, are to be deemed expenses for general county purposes, unless the enactment otherwise provides.

Apart from the question of general or special county purposes, the following are examples of county rate fund services in respect of which separate accounts are kept: Small Holdings; Mental Hospitals; and Allotments. [302]

**Other Separate Accounts. Motor and Local Taxation Licences.**—A county council are responsible within their area for the levy of licence duties in respect of motor vehicles (g). The proceeds do not form part of the revenues of the council, but the council act as agents of the M. of T., and the collections are paid in at a local bank to the credit of a M. of T. motor tax account and transmitted to form part of the income of the National Road Fund. Thus collections do not pass through the county fund, and though they are required to be shown in the statutory financial statement submitted

(b) L.G.A., 1933, s. 180 (1) (a); 26 Statutes 404.

(c) *Ibid.*, s. 180 (1) (b).

(d) *Ibid.*, s. 181 (2) (b).

(f) S. 180 (2).

(e) 11 Statutes 743.

(g) See title MOTOR LICENCES.

to the district auditor, they are excluded in assessing the audit stamp duty. A statistical statement showing the amount of the licence duties collected is frequently included in abstracts of accounts. Approved administrative expenditure is repaid by the M. of T. [303]

By virtue of sect. 6 of the Finance Act, 1908 (*h*), a county council are also responsible for the levy of certain other licence duties commonly known as the local taxation licences, *i.e.* armorial bearings, dogs, game, guns and male servants. In this instance the proceeds of the licences taken out within each administrative county form part of the revenues of the county council, and the fees for licences taken out at post offices in the administrative county are paid over periodically to the county council by the Postmaster-General. [304]

*Small Holdings.*—Separate accounts should be kept of financial transactions relating to small holdings provided (i.) before April 1, 1926, and (ii.) on or after that date. In the first category, the M. of A. contribute annually to the deficiency on a scheme of the county council in accordance with a financial settlement (*i*). A contribution may be made by the M. of A. not exceeding 75 per cent. of the estimated loss in providing holdings within the second category (*k*). A separate revenue account and balance sheet should be prepared in respect of each group. A revenue surplus on either account should be carried forward as a reserve to meet any annual deficit on that particular account. In the absence of a reserve the deficit should be charged to the general county rate fund, though it appears to be permissible to utilise a reserve on one account to meet a deficit on the other. Small holdings provided after April 1, 1926, frequently involve a rate charge, though this is unusual as regards holdings provided before that date. An annual income and expenditure account in columnar form may be compiled with advantage to show the financial results of each group of small holdings let to various tenants.

It should be noted that any surplus income may only be applied to relief of rates with the consent of the M. of H. (*l*). [305]

*Financial Year.*—The accounts of every county council are subject to district audit and consequently are to be made up yearly to March 31 (as hitherto) or such other date as the M. of H. may direct, either generally or in any special case (*m*). [306]

*"Receipts and Payments" or "Income and Expenditure."*—The implication of accounting on these respective bases is discussed under the title ACCOUNTS OF LOCAL AUTHORITIES. Accounts of "the receipts and expenditure" is the wording used in sect. 71 (1) of the L.G.A., 1888 (*n*), and although up to recent years county councils have usually interpreted this phrase to mean that the accounts should be kept on a receipts and payments basis, there has been a growing tendency to adopt the more scientific method of "income and expenditure."

In sect. 181 (2) of the L.G.A., 1933 (*o*), in relation to the accounts of county councils, the phrase "of receipts carried to and payments

(*h*) 16 Statutes 739. The date of the transfer was fixed and supplementary provisions were made by S.R. & O., 1908, No. 844.

(*i*) Embodied in s. 7 of the Land Settlement (Facilities) Amendment Act, 1925, replacing s. 27 of the Land Settlement (Facilities) Act, 1919 ; 1 Statutes 295.

(*k*) Small Holdings and Allotments Act, 1926, s. 2 (2) ; 1 Statutes 323.

(*l*) Small Holdings and Allotments Act, 1908, s. 54 ; *ibid.*, 277.

(*m*) L.G.A., 1933, ss. 219, 223 ; 26 Statutes 424, 427.

(*n*) 10 Statutes 744. Repealed by the L.G.A., 1933.

(*o*) 26 Statutes 405.

made out of the county fund" is used, and implies on a basis that the accounts will be of receipts and payments. On the other hand, sect. 182 (1) of the Act (*p*) requires that in connection with the annual budget of a county council an estimate of "income and expenditure" is to be submitted, while sect. 244 of the Act (*q*), in dealing with the local financial returns, provides for returns of "income and expenditure." It seems unlikely that the M. of H. would object to a proposal by a county council to keep their accounts on the basis of income and expenditure. [307]

**Forms of Account.**—Sect. 71 (1) of the L.G.A., 1888 (*r*), allowed the Local Government Board (now M. of H.) to prescribe the form in which the accounts of county councils should be kept. No order or regulation was ever made under this enactment in respect of county council accounts in general, though regulations under sect. 5 of the District Auditors Act, 1879 (*s*), were issued in 1930 in regard to public assistance accounts of county councils (*t*). See title PUBLIC ASSISTANCE AUTHORITIES. Sect. 235 of the L.G.A., 1933 (*u*), now enables the M. of H. to make regulations respecting the financial transactions which are to be recorded, and the mode of keeping and the form of the accounts of county councils. Regulations under this section have been made in regard to several matters affecting or connected with audits by district auditors (*v*).

The comparative freedom of the accounts of county councils from regulation by statute or order has resulted in a lack of uniformity as regards accounting methods, the form and use of primary records, and the arrangement and contents of abstracts of accounts, and it seems desirable that regulations applying to the general accounts of county councils should now be made by the M. of H. [308]

**Inspection, etc., of Accounts.**—Inspection rights may be summarised as follows:

|   |   |
|---|---|
| Certain documents whilst deposited <i>prior to district audit</i> . | By "all persons interested" ( <i>a</i> ).<br>See title AUDIT ( <i>b</i> ).  |
| Deposit and inspection of accounts as audited by district auditor.  | Matter for the regulations of the M. of H. ( <i>c</i> ).  |
| Order for payment of money.   | <i>Local government elector</i> may inspect, make a copy or extract ( <i>d</i> ).<br><i>Any member of the local authority</i> may inspect, make a copy or extract ( <i>e</i> ). |
| Accounts.   | <i>Local government elector</i> may inspect, make a copy or extract and is entitled to a copy on payment of a reasonable sum ( <i>f</i> ). [309]                                |
| Abstract of accounts and auditor's report.                          | <i>Local government elector</i> may inspect, make a copy or extract and is entitled to a copy on payment of a reasonable sum ( <i>f</i> ). [309]                                |

(*p*) 26 Statutes 405.

(*g*) *Ibid.*, 437.

(*r*) 10 Statutes 744. Repealed by the L.G.A., 1933.

(*s*) 10 Statutes 573. This Act is also repealed by the Act of 1933.

(*t*) The Public Assistance Accounts (County Councils) Regulations, 1930 (S.R. & O., 1930, No. 29).

(*u*) 26 Statutes 432.

(*v*) The Audit Regulations, 1934; S.R. & O., 1934, No. 1188.

(*a*) L.G.A., 1933, s. 224; 26 Statutes 427.

(*b*) At p. 505 of Vol. I.

(*c*) L.G.A., 1933, s. 235 (1) (h); 26 Statutes 433. See also the Audit Regulations, 1934; S.R. & O., 1934, No. 1188.

(*d*) *Ibid.*, s. 283 (2); *ibid.*, 455; and see title LOCAL GOVERNMENT ELECTORS.

(*e*) *Ibid.*, s. 283 (8). As to the employment of skilled assistance in inspection, see R. v Bedewell *U.D.C.*, *Ex parte Price* (1933), 31 L. G. R. 430; Digest (Supp.).

(*f*) *Ibid.*, s. 283 (4).

### METHODS OF ACCOUNTANCY

Under the head "Methods of Accountancy" various matters are discussed concerning the accountancy system of local authorities generally, whether county councils or other types of councils, in the title *ACCOUNTS OF LOCAL AUTHORITIES*, at pp. 31—46 of Vol. I. It may be desirable to refer to certain aspects of these questions which specially affect the accounts of county councils.

**Ordering of Goods.**—An efficient system of ordering goods is essential. In some counties the official invoice method is in operation, *i.e.* accompanying the order issued to a tradesman is a form of invoice which is completed by the supplier. This arrangement is open to objection, and the rendering by a tradesman of his account on his own printed billhead has much to commend it.

The authorisation of supplies through a committee requisition book is not often found, and it is doubtful whether such a book could be very effective in regulating and controlling expenditure in the circumstances of a county council. A more effective system lies in obtaining competitive tenders and quotations, against which, after acceptance, each department orders its supplies within the limits allowed by the annual or other estimate for expenditure under the appropriate heading.

Central storekeeping is not practised to the same extent by county councils as by some other types of local authority, though several of the larger county councils are exceptions in this respect. The difficulty of transporting supplies is usually considered to militate against the successful operation by a county council of a central stores system. As a general rule, however, county councils are in a position to take full advantage of central contracting whereby supplies for delivery as and where required throughout the county, can be arranged for so as to obtain the benefit of large-scale purchases. [310]

**Payment of Accounts.**—With certain exceptions, all payments out of the county fund must be made in pursuance of a properly authenticated order of the council (*g*). This order is not a cheque but a schedule of payments to be made by the treasurer. Since the majority of county councils hold their council meetings at quarterly intervals, and this involves undue delay in the payment of tradesmen's accounts, departures from the strict legal requirements are often found. Various methods are adopted. In some counties the payments out of the county fund consist of block advances to subsidiary bank accounts from which individual payments are made, the separate cheques being then deemed not to require the *counter-signature* of the clerk or other approved officer (*h*). Such separate cheques usually bear the sole signature of the treasurer or other authorised officer. Another method is for the statutory order on the treasurer to authorise the payment of amounts becoming due during the ensuing quarter not exceeding a specified sum. Accounts for payment are then submitted, say, monthly to the finance or other committee and a schedule thereof signed by three members as an order on the treasurer, whereupon individual cheques are signed by the treasurer and countersigned by the clerk or other approved officer. In addition to either method, special arrangements are usually necessary to meet urgent payments

(*g*) L.G.A., 1933, s. 184 (2); 26 Statutes 406.

(*h*) See *ibid.*, s. 184 (4).

(e.g. under a contract or to secure discount). In practice such payments are made without specific individual authorisation by an order on the treasurer. Confirmation is usually obtained later. Cheques are authorised, drawn and signed under various arrangements. In some cases a sub-committee meet weekly or at other frequent intervals to authorise payment, or the chief financial officer may authorise a particular disbursement. Cheques are sometimes drawn on a special emergency bank account, and signed by the chief financial officer with or without one or more other signatures, such as those of the clerk and chairman.

In practice it is difficult if not impossible to comply with the strict letter of the law governing the release of moneys. On pp. 50, 51 of their interim report (*i*), Lord Chelmsford's committee drew attention to the expedients which are adopted to make the system work. Originally the committee had hoped to draft a single amended code applying to all local authorities, but investigation disclosed that several contentious points would arise and the project was not pursued. Sound organisation within the finance department (e.g. proper vouching of payments) may afford an equal, if not a better, safeguard against improper payments compared with that given by a rigid compliance with the provisions of the statute. [311]

**Petty Cash.**—Owing to the extensive area of most counties, advances to a large number of officers are made for petty cash purposes. Each officer should be treated as an accounting officer for the sum advanced and a ledger account opened. The imprest system (*k*) should be adopted and the accounts made subject to internal audit by the finance department. It is desirable that regulations be prescribed as to the individual amount and nature of payments which may be made from petty cash accounts though such regulations should be sufficiently flexible to allow of the exercise of an officer's discretion in an emergency. [312]

**Cash Book.**—The form of cash book varies, and to some extent depends on the accounting system and the function of subsidiary records. One cash book or several may be used to suit local circumstances. Advantages are derived from confining entries on the debit and credit side respectively to totals obtained from primary records suitably designed to fit in with the ledger system. Thereby clerical work is minimised and unnecessary repetition of entries avoided.

Receipts may be divided into two groups, viz. :

- (A) Amounts received in the finance department at the central county office ;
- (B) Amounts credited direct through the council's bankers.

With regard to the former group an official receipt book—say five receipts to a page—may be combined with a collecting and deposit book. In this way one essential primary record may serve several purposes, viz. : (i.) concentration of official receipts issued ; (ii.) facilitation of the proper vouching of banking of collections ; (iii.) as a subsidiary cash book forming part of the ledger system ; and (iv.) segregation of total collections in respect of various accounts—such totals being available for cash book purposes and also in connection with a composite paying-in slip readily completed so as to show (*inter alia*)

(*i*) Cmd. 4272 of 1933.

(*k*) See title ACCOUNTS OF LOCAL AUTHORITIES at p. 35 of Vol. I.

the respective amounts to be credited to the various separate bank accounts.

A different system may be more appropriate and the magnitude of central office collections may warrant the introduction of a mechanical device, *e.g.* a cash register. As a general rule, however, the number of central office receipts of county councils is not sufficiently numerous to warrant the use of mechanical devices for this purpose.

Referring to receipts under group (B)—amounts credited through the council's bankers—it will probably be found convenient to particularise each item in the cash book, since entries within this category are likely to be relatively few. Within this group are certain Government grants, received as a result of credits passed through London bank accounts. In addition, it may be a good arrangement—particularly in a county—for sums to be received at local banks for the credit of a county council's account at headquarters, *e.g.* (i.) secondary school fees received from parents—a receipt on a detachable portion of a slip being given to the parent by the local bank, (ii.) public assistance collections paid in by collectors who issue receipts.

With regard to the credit side of the cash book, payments may be entered in total from the bank order or each committee schedule. Office machinery (*e.g.* a cheque writing machine) may be used in connection with disbursements which are made almost exclusively by cheque. At one typing operation, several processes may be completed, *i.e.* cheque, bank list, committee schedule, and subsidiary cash book on the loose leaf principle. [313]

**Subsidiary Books.**—According to local requirements or custom various subsidiary books may be kept as part of the accountancy system, *e.g.* :

(i.) *Register of Periodical Receipts and Payments.*—One or more books of this type serve as a concentrated record of all amounts of a recurring nature, *e.g.* rents, rates, taxes, wayleaves, subscriptions and gas and water charges. A “visible index” loose leaf system may be adopted. Receipts should be segregated from payments and transactions relating to each fund, purpose, or separate account kept in a section divided by means of a tab. A sheet may be used for each item of receipt or payment, and by means of a suitable ruling and the insertion of appropriate particulars such a book acts not only as a controlling record, but may also form part of the ledger system as a direct posting medium linked with aggregate control accounts. [314]

(ii.) *Debtors' Register.*—In practice sums of a varied nature may be receivable and form the subject of an account rendered, *e.g.* highways rechargeable work and non-settled public assistance relief. Entries of amounts due and received may be made in a debtors' register or ledger, which may also serve as a ledger posting channel by a suitable arrangement of analysis columns, coding, division into sections by tabs, individual posting or otherwise. Appropriate control accounts may render the book “self-balancing.” [315]

(iii.) *Contracts Ledger.*—Where a considerable amount of large building, constructional or repair work is carried out under contract, as opposed to direct labour, a contracts ledger may be used to regulate payments and if desired serve for ledger posting purposes. A loose leaf book may be used, arranged in sections to correspond with the principal services in respect of which work is performed (*e.g.* education

or highways). A sheet may be used for each contract, the top portion indicating particulars of the contract and the lower portion recording sums due and paid. [316]

(iv.) *Creditors' Ledger.*—Individual accounts with creditors (*i.e.* tradesmen) are not usually kept, mainly because of the work entailed. Objectionable as it may be on academic grounds as conflicting with account keeping on an income and expenditure basis, the general practice on most accounts of a county council is for cash payments to tradesmen for supplies to be debited directly or indirectly to the expenditure accounts concerned, save in some counties in the opening months of the financial year under the alternative method discussed below. Amounts due to tradesmen in respect of a financial year but unpaid at March 31, should be charged as expenditure to the various services concerned, and in practice at least two methods are found of introducing these items into the accounts. The amounts may be enumerated on schedules, debited to the expenditure accounts concerned and carried forward on the same accounts as unpaid balances. In the opening months of the ensuing financial year, cash payments, whether in respect of creditors of the previous year or expenditure of the current year, are debited to the expenditure accounts concerned. Thereby any under-estimate or over-estimate in respect of the opening balance of creditors is automatically adjusted. An alternative practice is for a creditors' ledger, usually arranged under the principal services, to be kept in respect of amounts owing at the end of the year. In the following year, cash payments require to be divided and amounts referable to expenditure of the preceding year debited in the creditors' ledger, the difference between such cash payments and the balance of creditors brought forward being transferred to the expenditure accounts concerned. [317]

**The Ledger.**—One or more ledgers on the loose leaf principle may be kept to suit local circumstances, and a suitable division and grouping of accounts maintained, *e.g.* capital and revenue; personal accounts; expenditure and income accounts.

A revenue account or rate fund account should be prepared in respect of each rate fund or principal service which forms the subject of a separate account (*l.*). Speaking generally this involves a revenue account of such services or funds as: general county account; each special county account or group of such accounts (including in most cases elementary education); allotments; small holdings; and public assistance—the total expenditure and income on these last services being carried to the general county account.

The principles which may well be followed in the keeping of the ledger are discussed under the title **ACCOUNTS OF LOCAL AUTHORITIES** at pp. 41, 42 of Vol. I. Importance should be attached to the suitability of the title of the ledger accounts under which expenditure or income is classified. An excellent summary classification is provided in the form of epitome of accounts rendered annually to the M. of H. in connection with the publication by that department of the yearly Local Taxation Returns. In respect of certain services enumerated in the form, returns of expenditure and income under rather more detailed headings are required by other Government departments—in certain instances as the basis of a separate grant-in-aid. Here again the headings of expenditure and income appearing in the appropriate

form of claim or return may be taken as a basis of the heads of account required.

From the foregoing it will be appreciated that the form of Government returns has an important bearing on the ledger system. It is eminently desirable that a common system of ledger account headings should prevail as regards (i.) rate estimates, (ii.) statements prepared in the course of the year comparing expenditure and income with estimates, (iii.) Government returns, and (iv.) abstracts of accounts. A further advantage is that without any intermediate schedules, which otherwise would be necessary, the entries in the M. of H. form of epitome of accounts may be used as the basis of the statutory financial statement to be submitted to the district auditor for the purpose of assessing stamp duty. This latter statement provides for total amounts only.

Posting to ledger accounts may be made in one of several ways. A convenient and labour-saving method adopted in practice is to utilise one or more subsidiary cash books compiled as described at p. 140, *ante*. Utilising, say, two or three expenditure code analysis columns on the right of each loose leaf sheet and aggregating, by means of mechanical means or otherwise, payments referable to the various code numbers, totals may be ascertained for posting to the ledger accounts concerned. The entries on each sheet may be so treated, or alternatively a series of sheets covering say a month. [318]

**Balance Sheet.**—A separate balance sheet should be prepared in respect of each rate fund or principal service for which a revenue account is compiled. The form might be based on that required by the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (*m*). The "Capital" and "Revenue" sections should be compiled separately and a balancing of each section effected.

In the capital section, the liabilities side will be relatively straightforward and simple, since the incidents which frequently cause complications in the preparation of a balance sheet do not occur in the accounts of most county councils, viz.: stock issues (*mm*) and sinking funds, because county councils usually borrow by means of loans repayable either on the "instalment" or the "annuity" basis as described in the title **BORROWING**. Accordingly the amount of outstanding loans in the balance sheet will usually represent loans reduced year by year by repayments of principal charged to the revenue or rate fund. With regard to the classification and values of assets appearing in the capital section of the balance sheet, the "capital assets" or "deferred charge" method may be followed (*n*). A good plan is to adopt the recommendations of the Departmental Committee of 1907 on Accounts of Local Authorities and classify the assets in two categories, viz.:

|                               |  |
|-------------------------------|--|
| At cost.                      | Assets having an abiding and/or realisable value,<br><i>e.g.</i> county offices, institutions, etc.                            |
| At cost less loan repayments. | Capital expenditure not creating an asset having an abiding and/or realisable value, <i>e.g.</i> road and bridge improvements. |

(*m*) S.R. & O., 1930, No. 30. See also title **ACCOUNTS OF LOCAL AUTHORITIES** at p. 50 of Vol. I.

(*mm*) A number of county councils have within recent years raised their loans by stock issues.

(*n*) See title **ACCOUNTS OF LOCAL AUTHORITIES** at p. 48 of Vol. I.

In many cases though a county council may desire to follow the "capital assets" method, *i.e.* assets at cost, difficulty is experienced in ascertaining the appropriate figures, where assets were acquired many years ago and the relevant loans have long since been paid off. This point was very noticeable in connection with the public assistance institutions transferred to county councils by the L.G.A., 1929, from boards of guardians who, for the most part, reduced the value of their capital assets as loans were repaid. To meet this difficulty, a value may be placed on properties of this kind, the value adopted being either the value taken for fire insurance purposes or the estimated value on a special valuation of the properties. Since it is the practice of county councils to defray substantial amounts of capital expenditure from revenue instead of raising loans, care should be taken to include the value, at cost, of the asset thus created in the capital assets appearing in the balance sheet—so far as thereby an asset is created having an abiding and/or realisable value.

In respect of all the various separate funds or accounts an aggregate balance sheet should be compiled. For convenience this may be set out in the general county fund ledger. [319]

**Abstract of Accounts.**—Prior to the L.G.A., 1933, a full abstract of the accounts of a county council for each financial year was required to be printed by the treasurer (*o*). Although under this Act a similar obligation—omitting the word "full"—is placed on the borough treasurer as regards accounts not subject to audit by a district auditor (*p*), the making of an abstract of the accounts of a county council is now a matter to be dealt with in regulations which may be made by the M. of H. (*q*), because the accounts of all county councils are subject to district audit.

By clause 7 of the Audit Regulations, 1934 (*r*), the county council are required, after the completion of the audit, forthwith to make an abstract of the accounts as audited. Within one month after the receipt of the auditor's report, they are to advertise in one or more local newspapers that the audit has been completed, and that the abstract has been deposited at the appropriate office and may be inspected at all reasonable hours by any local government elector of the county. By clause 10 the M. of H. may in any particular case extend the period already referred to, if he is satisfied that there are special circumstances warranting the extension. [320]

**Suggested Forms.**—The practice of county councils as to the form and contents of abstracts of accounts has varied considerably, particularly as regards the amount of detail printed. Endeavour should be made to reduce such detail. The inclusion of the following particulars, in the order named, is suggested :

1. *General Review.*—The financial transactions of the county council for the year to be reviewed as a whole in a short report.

2. *General Statistics, e.g. area; population; rateable value; produce of a penny rate; rates in the £ of precepts issued for general*

(*o*) L.G.A., 1888, s. 71 (2); 10 Statutes 745; applying Municipal Corporns. Act, 1882, s. 27 (2); 10 Statutes 586. Both provisions are repealed by the L.G.A., 1933.

(*p*) L.G.A., 1933, s. 240; 26 Statutes 435.

(*q*) *Ibid.*, s. 285 (1) (1).

(*r*) S.R. & O., 1934, No. 1188.

and special county purposes ; total rate fund expenditure and extent to which met by Government grants ; sundry income and rates ; loan indebtedness. The unit equivalent (*e.g.* per head of population) may also be indicated for certain of the foregoing items. Further statistical data may be incorporated in respect of various services, *e.g.* mileage of county roads, number of scholars in average attendance in elementary schools. It is also an advantage to give comparable figures for several recent years.

**3. Epitome of Accounts.**—A condensed form of the return rendered to the M. of H. may be given, particularly as thereby comparisons with other counties can be attempted. The portion of the return showing the cost of the various rate fund services is well worthy of inclusion.

**4. Revenue Accounts.**

(i.) General county account.

(ii.) Special county accounts.

(iii.) Other separately balanced accounts, *e.g.* elementary and higher education ; superannuation fund ; small holdings.

The sequence in which the various heads and sub-heads against which expenditure and income is shown in the revenue account of the general county account may follow the order of the M. of H. epitome of accounts. Alternatively each committee, *e.g.* public health and housing, may be the subject of a main heading, and information set out under the various services administered by a committee, *e.g.* tuberculosis and maternity and child welfare. To reduce the detail in respect of a particular service, it may be advisable to show only the total expenditure and income thereof in the particulars of the general county revenue account, leaving fuller information with regard to a service to appear elsewhere in the abstract, *e.g.* public assistance.

**5. Balance Sheet.**—A balance sheet should be given for each fund or separately balanced account and set out in the form previously discussed (s).

**6. Aggregate Balance Sheet.**—This again might be based on the form of balance sheet prescribed by the Regulations of 1930 as to boroughs ; see the title ACCOUNTS OF LOCAL AUTHORITIES at p. 50 of Vol. I.

**7. Index.**—A number of abstracts of accounts contain various statistical statements relating to capital expenditure and loans. Particulars of each capital scheme may be given showing details of expenditure, loan sanction, amount borrowed, loan outstanding at commencement of year, redemption provision during year, loan outstanding at end of year, and amount in sinking fund (if applicable). In some instances, current capital schemes only are dealt with in detail in statistical statements. In others, full particulars are set out in the capital section of each balance sheet.

Several county councils incorporate in their abstracts various diagrams and graphs relating to such matters as expenditure, rates, Government grants and loans. Data over a series of years may be depicted. Information presented in this way is readily assimilated.

A further recent development is the policy of publishing a separate booklet for the supply of information of a general and not too detailed

(s) See *ante*, p. 142, and title ACCOUNTS OF LOCAL AUTHORITIES at p. 50 of Vol. I. as to the form for boroughs prescribed by the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930.

character as to the financial transactions of the county council. If this course is adopted data which otherwise would be included in an abstract of accounts may be transferred there, *e.g.* the review of finances for the year; general statistics; diagrams and graphs. [321]

#### VARIOUS ACCOUNTANCY MATTERS

**Accrued Income and Charges.**—At the end of the financial year, a proportion of periodical receipts and payments (*t*) will inevitably have accrued since the previous payment was made or instalment accrued. The amounts cannot be said to be legally due to or by the county council on March 31, and thus should not be introduced in personal accounts with debtors or creditors. It is not considered necessary or desirable to make provision for the entry of such items when closing the accounts of a county council. To some extent the point may be met in another way by arranging that as far as practicable the due date for such items may be the close of the year, *e.g.* insurances renewable on March 25, so that the payments made in the accounts of a financial year represent a full year's expenditure. A similar problem arises in connection with accrued proportions of loan charges (principal and interest) and dividends receivable. Again exclusion from the accounts is the better policy. [322]

**Central Establishment Charges.**—As indicated previously (*u*), a feature of county council accounts is the number of rate funds or separately balanced accounts. Central establishment expenditure should be apportioned so as to cast upon each rate fund or separate account an equitable charge for services performed. This principle is recognised in sect. 180 (3) of the L.G.A., 1933 (*a*), which allows a proper proportion of the cost of the officers and buildings and establishment of the county council to be added to the expenses directly incurred for general or any special county purpose. For this purpose an analysis of these classes of expenditure should be made. It is impossible to lay down hard and fast rules as to the basis of apportionment and all relevant information as to time occupied, extent of occupation and services rendered should be placed before the finance committee for decision as to the charges to be made to the various accounts. Not only is this matter of importance from the standpoint of incidence of expenditure and rates, but also in relation to certain services which continue to attract separate Government grants. In some instances, apportioned amounts of the cost of central departments of a county council are recognised for grant purposes. [323]

**Costing.**—A suitable arrangement of expenditure account headings (*b*) will afford costing data which can be reduced to a unit basis for control and comparative purposes, *e.g.* as respects each public assistance institution. Thereby the need for further costing records is avoided though in connection with highways and bridges separate cost accounts will be necessary. Practice varies as to whether these records are kept in the office of the chief financial officer or the county surveyor, and in some respects this becomes an academic question if certain safeguards are adopted in the event of the accounts being kept in the surveyor's department. Costing records are merely an extension

(*t*) See *ante*, p. 140.

(*a*) 26 Statutes 405.

(*u*) See *ante*, p. 134.

(*b*) See *ante*, p. 141.

of the classification adopted for the financial accounts, and if they are separately controlled should be subject to internal audit by the finance department and should be designed to fit in with the main financial system thereby avoiding the keeping of two sets of accounts containing more or less the same detail.

The arrangement of the costing and stores accounting is influenced largely by the detailed forms in which expenditure is required to be returned to the M. of T. for the purpose of assessing grant in respect of (1) maintenance, and (2) improvement, of Class I. and Class II. roads and bridges, and under certain conditions improvement work to unclassified rural roads. A further influencing factor is the degree of delegation of highway functions to minor authorities in a particular county. Returns of expenditure will require to be furnished to the county council and the forms should be drafted with care to supply all information reasonably necessary for the county council's own use and for completion of claims on the M. of T. At the same time the forms should be drafted so as not to lend colour to any complaint by a minor authority that unnecessary details are requested to be supplied. See also the title COSTING. [324]

#### LONDON

Parts X. and XI. of the L.G.A., 1933 (relating to the audit of accounts and financial returns), apply to London (c), but otherwise the finances of the L.C.C. are governed mainly by the L.G.A., 1888 (d). The county accounts are made up to the end of the local financial year (March 31), and are kept on the income and expenditure basis. The accounts must be kept in such a way as to prevent the whole county from being charged with expenditure which is properly payable by a portion of the county only (e).

The account of expenditure to which the whole of the administrative county contributes is called the "General County Account." The City of London is exempt from contributing towards a part of the county council's expenditure, and in respect of such expenditure a "Special County Account" is kept. Statutory power has been given to the council and the City to agree to the cessation of this exemption (f), but no agreement has yet been made.

There are many separate accounts kept for the various branches of the council's administration. Transactions under the Housing, Town Planning, etc., Act, 1919, the Housing, etc., Act, 1923, the Housing (Financial Provisions) Act, 1924, and the Housing Act, 1930, respectively, are recorded in separate accounts. There are also separate accounts known as the "Mental Hospitals Account" and the "Consolidated Loans Fund" (a debt account showing all transactions relating to interest on, and redemption of, debt); and since April 1, 1930, a separate banking account has been kept called the "Public Assistance Account," to which are carried all receipts in connection with public assistance (other than transferred schools) and hospitals.

As to the audit of accounts, see title AUDIT, Vol. I., p. 517, and see also, generally, title ACCOUNTS OF LOCAL AUTHORITIES, Vol. I., p. 51. [325]

(c) See ss. 243, 248; 26 Statutes 437, 439.

(d) See ss. 71, 73; 10 Statutes 744, 745.

(e) L.G.A., 1888, s. 68 (7); *ibid.*, 741.

(f) *Ibid.*, s. 41 (7); *ibid.*, 721.

## COUNTY ALDERMAN

*See ALDERMEN.*

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## COUNTY ANALYST

*See ANALYST.*

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## COUNTY APPORTIONMENT

*See GENERAL EXCHEQUER GRANTS.*

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## COUNTY BOROUGH

| PAGE   |     | PAGE   |     |
|--|-----|--|-----|
| INTRODUCTION - - - - -   | 147 | COMMITTEES AND JOINT COM-                        |     |
| STATUS AND CONSTITUTION OF A<br>COUNTY BOROUGH AND ITS<br>COUNCIL - - - - -                | 149 | MITTEES - - - - -                                | 151 |
| QUALIFICATION, DISQUALIFICATION<br>AND OTHER PROVISIONS APPLY-<br>ING TO MEMBERS - - - - - | 150 | FINANCE - - - - -                                | 151 |
| MEETINGS AND PROCEEDINGS - - -   | 150 | FUNCTIONS OF COUNTY BOROUGH<br>COUNCIL - - - - - | 152 |
|  |     | OFFICERS AND STAFF - - - - -                     | 154 |
|  |     | ACQUISITION OF LAND - - - - -                    | 155 |

The majority of the articles bear upon the functions of county borough councils. As to their status further reference may be made to the titles ALTERATION OF AREAS; AREAS OF LOCAL GOVERNMENT; CHARTERS OF INCORPORATION; COMMON LAW CORPORATION; COUNTY BOROUGH, CREATION OR ALTERATION OF; COUNTY OF A CITY OR TOWN; CREATION OF CITIES; FREEDOM OF CITY OR BOROUGH; LORD MAYOR; LOCAL GOVERNMENT; MAYOR; MUNICIPAL CORPORATIONS; ROYAL BOROUGH.

For their internal structure reference should be made to the titles ALDERMEN, BOROUGH COUNCILLOR, or COMMITTEES.

**Introduction.**—The council of a county borough has all the functions of the council of a non-county borough, with the addition of some of the functions of a county council. The council may be one of the constituent councils by which a joint board or such a joint committee as is mentioned later may be appointed, but otherwise the county borough is administratively self-contained, and, unlike the county,

has no smaller units of local government within its area. As will be seen from the title COUNTY BOROUGHS, CREATION AND ALTERATION OF, county boroughs were first created by the L.G.A., 1888. By sect. 31 of that Act (*a*), certain boroughs with a population of over 50,000, with some other boroughs which were already counties of cities or of towns (*b*), were created county boroughs. Others have since been created by provisional order or local Act, and a list of those existing at the present day is given in Part II. of the First Schedule to the L.G.A., 1933 (*c*). By a proviso to sect. 31 of the Act of 1888, a county borough that was not an assize town, was to continue part of the county for assizes.

The county boroughs created by the L.G.A., 1888, were of course all municipal boroughs to which the Municipal Corporns. Act, 1882 (*d*), applied, and were already regulated by that Act. Meanwhile, by sect. 6 of the P.H.A., 1875 (*e*), all municipal boroughs had in common with Improvement Act districts and districts of local boards been created urban sanitary districts, and their councils were to administer the Act of 1875 as the urban sanitary authority. The constitution of a borough as a county borough did not affect the position of the council as the urban sanitary authority. [326]

A complication was then created by sect. 21 of the L.G.A., 1894 (*f*). The draftsman of that Act wished to devise a comprehensive term by which to refer, in future Acts of Parliament, to councils of boroughs, urban and rural districts, and for this purpose invented the term "district council" to include all these councils, and "county district" to cover their boroughs and districts. It may have been intended that a county borough council should have been regarded as a district council, although "county district" is hardly an appropriate description of a county borough; but whatever may have been the intention, the application of sect. 21 to a county borough was negatived by sect. 35 of the Act (*g*), which provided that Part II. (in which sects. 21, 35 were included), should not apply to a county borough unless otherwise specially provided.

For an example of the difficulties of interpreting the Act of 1894 which arose, reference may be made to the case of *Kirkdale Burial Board v. Liverpool Corpns.* (*h*), in which it was held that sect. 62 of the Act of 1894 applied to a county borough. Where it was desired that county borough councils should be local authorities for the purposes of an Act passed between 1894 and 1929, the method of attaining this object differs in almost every instance. The amending P.H.As. of 1890, 1907 and 1925 (*i*), followed the mode in which the P.H.A., 1875, was drafted and referred to the "local authority" the "urban sanitary authority" or the "urban authority," which of course included county borough councils. On the other hand, the new expression "district council" was used in the Factory and Workshop Act, 1901 (*k*), but this term was extended to include the council of a county borough by sect. 154 of the Act (*l*). By sect. 7 of the Advertisements Regulation

(*a*) 10 Statutes 708.

(*b*) See title COUNTY OF A CITY OR TOWN, at *post*, p. 194.

(*c*) 26 Statutes 471.

(*d*) 10 Statutes 576.

(*e*) 13 Statutes 628, now repealed by L.G.A., 1933, except the last sentence.

(*f*) 10 Statutes 792.

(*g*) *Ibid.*, 799.

(*h*) [1904] 1 Ch. 829; 33 Digest 55, 337.

(*i*) 13 Statutes 824, 911, 1115.

(*k*) See e.g. ss. 5 (1), 14 (1), 15; 8 Statutes 520, 525, 527.

(*l*) 8 Statutes 597.

Act, 1907 (*m*), the council of any municipal borough is to be the local authority, but by sect. 1 (1) of the R. & V.A., 1925 (*n*), the council of every county borough and of every urban and rural district was constituted the rating authority for the borough or for the county district. This brings in the councils of non-county boroughs as being councils of urban districts.

In sect. 134 of the L.G.A., 1929 (*o*), the definitions were clarified and "county" was defined as an administrative county, exclusive of a county borough, and "district" as meaning a county district, i.e. a non-county borough or other urban district or a rural district. In sect. 2 (1) of the Town and Country Planning Act, 1932 (*p*), the authorities outside London administering the Act are called county borough and county district councils (*q*).

The definitions in sect. 305 of the L.G.A., 1933 (*r*), follow those of the L.G.A., 1929, and "county" is defined as meaning administrative county, though there is no mention of county borough, and "county district" means a non-county borough, urban district or rural district. The word "borough," however, is generally used in the Act as covering both a county and a non-county borough; see e.g. the provisions as to boroughs in sects. 17—30 of the Act (*s*). These extend to both classes of boroughs. In drafting future Acts of Parliament, the use of "district council" as including the council of a borough will be abandoned; see the repeal by the L.G.A., 1933, of sect. 21 (3) of the L.G.A., 1894, as respects future Acts. [327]

**Status and Constitution of a County Borough and its Council.**—By sect. 1 (3) of the L.G.A., 1933 (*t*), every county borough, with respect to the functions which the council of the borough discharge, is to form a separate administrative area. By sect. 34 of the L.G.A., 1888 (*a*), the council of a county borough were to have and be subject to the powers, duties and liabilities of a county council, except that the provisions mentioned in sub-sect. (3) of the section were not to apply to county boroughs. The borough fund was to take the place of the county fund, the town clerk that of the clerk of the county council, and other modifications were made.

Apart from these extra functions and functions conferred on the councils of county boroughs by Acts passed between 1888 and the present day, of which the transfer of the powers of school boards made by the Education Act, 1902, and of the administration of the poor law made by sect. 1 of the L.G.A., 1929 (*b*), are the examples of greatest importance, a county borough council is for the most part subject to the law governing the council of a non-county borough. Generally the number of councillors and aldermen of a county borough is larger than that of a non-county borough, and the mayor has often been converted by Royal letters patent into a lord mayor. But an examination of the provisions as to the mayor, aldermen and councillors in sects. 18—30 of the L.G.A., 1933 (*c*), reveals only one instance in which these provisions do not extend to the councils of both county and non-

(*m*) 18 Statutes 909.

(*n*) 14 Statutes 617.

(*o*) 10 Statutes 971.

(*p*) 25 Statutes 472.

(*q*) This is supplemented by a definition of "district" in s. 53, as meaning a borough, in relation to the council of a borough.

(*r*) 26 Statutes 466.

(*s*) *Ibid.*, 313—319.

(*t*) *Ibid.*, 306.

(*a*) 10 Statutes 711.

(*b*) *Ibid.*, 883.

(*c*) 26 Statutes 318—319.

county boroughs. This exception is in sect. 18 (8) of the Act (*d*), and relates to the service of the mayor of a non-county borough as a J.P. for the county.

The law stated as to borough aldermen in the title ALDERMEN, as to councillors in the title BOROUGH COUNCILLORS, and as to the mayor in the titles MAYOR and LORD MAYOR extends to county boroughs as well as non-county boroughs.

Nor is the council of a county borough a corporate body. Like a non-county borough, the body incorporated is the municipal corpn., and by sect. 17 (2) of the Act of 1933 (*e*) the council exercise all such functions as are vested in the municipal corpn. by the Act of 1933, or otherwise. No alteration of the style of the municipal corpn., because the borough is a county borough, is authorised by sect. 17 of the L.G.A., 1933, but it is possible that an Act or order by which the borough was constituted a county borough may contain some special provision on this point. By sect. 17 (1) of the Act of 1933 the name of the municipal corpn., if the borough is a city entitled to a lord mayor (*f*), is the lord mayor, aldermen and citizens of the city, in the case of any other city the mayor, aldermen and citizens; and in the case of any other borough, the mayor, aldermen and burgesses. [328]

**Qualification, Disqualification and other Provisions applying to Members.**—With one exception the provisions as to qualification and disqualification for being a member of the council, contained in sects. 57—59 of the Act of 1933 (*g*), extend to councils of county boroughs as well as of non-county boroughs. This exception will be found in sect. 59 (1) (*h*) of the Act (*h*), which provides that a person who is a paid officer engaged in the administration of the poor law, or a person who having been such a paid officer has been dismissed from his office within five years before the day of election under any enactment relating to the relief of the poor, shall be disqualified for being elected or being a member of a county borough council or county council. This disqualification does not relate only to the council by whom the officer is or was employed, but extends to any council who are a poor law authority.

The provisions as to acceptance of office, resignation, failure to attend meetings by members and casual vacancies in sects. 61—68 of the Act of 1933 (*i*) extend to members of councils of county boroughs as well as of non-county boroughs, as do also the miscellaneous provisions as to elections in sects. 69—74 of the Act (*k*), and sects. 79—83 (*l*). [329]

**Meetings and Proceedings.**—The meetings and proceedings of both classes of borough council are regulated by sect. 75 and Parts II. and V. of the Third Schedule to the L.G.A., 1933 (*m*).

The prohibition by sect. 76 of the Act (*n*) against taking part at a meeting of a local authority in the consideration or discussion of or voting on any question with respect to a contract, proposed contract or other

(*d*) 26 Statutes 314.

(*e*) *Ibid.*, 313.

(*f*) See titles MAYOR ; LORD MAYOR ; and CREATION OF CITIES.

(*g*) 26 Statutes 338, 334.

(*h*) *Ibid.*, 334.

(*i*) *Ibid.*, 337—343. These provisions are set out in the titles ACCEPTANCE OF OFFICE ; BOROUGH COUNCILLOR ; and CASUAL VACANCY.

(*k*) *Ibid.*, 343—345.

(*l*) *Ibid.*, 349—350.

(*m*) *Ibid.*, 346, 497, 500.

(*n*) *Ibid.*, 346.

matter in which a member of the authority has a direct or indirect pecuniary interest, extends to both classes of borough council.

Similarly the new provisions in sect. 84 of the Act (*o*), allowing proceedings to be instituted by a local government elector, either in the High Court, or before the justices against a person acting as a member of a council, or as mayor of a borough, on the ground of his being disqualified for so acting, extends to the council of a county borough, as well as of a non-county borough. The section also allows proceedings to be instituted in the High Court against a person who has not acted, but who claims to be entitled so to act. [330]

**Committees and Joint Committees.**—The general provision as to the appointment of committees for general or special purposes in sect. 85 of the Act (*p*) is the same for county, borough, district and parish councils, but the requirement in sect 86 (*q*) that a finance committee must be appointed, applies to county councils only, although any council who wish to appoint a finance committee may do so under sect. 85 of the Act; see the terms of sub-sect. (3) of the section.

As regards the joint committees authorised by sect. 91 of the Act (*r*), it is to be noticed that this section does not apply to a joint committee appointed under any other enactment, such as a joint committee under sect. 3 of the Poor Law Act, 1930 (*s*), or to the standing joint committees appointed under sect. 30 of the L.G.A., 1888 (*t*), for the purpose of administering the county police. Sect. 81 (7) of that Act (*u*), as in part repealed by the L.G.A., 1933, authorises a standing joint committee to be appointed for two or more administrative counties, including county boroughs, the members of which are to be appointed by the several quarter sessions and councils in such proportion and manner as they may respectively arrange, and in default of arrangement as directed by the Secretary of State. By sect. 93 (1) of the L.G.A., 1933 (*a*), if there is a disagreement as to the expenses incurred by a joint committee set up by local authorities under sect. 91, and a county council or county borough council are an appointing authority, the point at issue must be decided by the M. of H. [331]

**Finance.**—The financial administration of borough councils is regulated by sects. 185—187 of the L.G.A., 1933 (*b*), which replace corresponding sections in the P.H.A., 1875, Municipal Corps. Act, 1882 and the L.G.A., 1888. They deal with the general rate fund of the boroughs and the power of the councils to levy rates; see titles FINANCE and RATES AND RATING. By sect. 1 of the R. & V.A., 1925 (*c*), county borough councils are the rating authorities for their boroughs, and by sect. 16 of that Act (*d*), a county borough is an assessment area, but may be included in a joint assessment area under sub-sect. (3) of the section (*e*).

The law governing borrowing by borough councils (*f*) is the same for county borough councils as for the councils of non-county boroughs, and is dealt with in the title BORROWING.

(*o*) 26 Statutes 350.

(*p*) *Ibid.*, 352. See also title COMMITTEES.

(*q*) *Ibid.*, 353.

(*r*) *Ibid.*, 355.

(*s*) 12 Statutes 969.

(*t*) 10 Statutes 708.

(*u*) *Ibid.*, 752.

(*a*) 26 Statutes 356.

(*b*) *Ibid.*, 407, 408.

(*c*) 14 Statutes 617.

(*d*) *Ibid.*, 640.

(*e*) See title ASSESSMENT COMMITTEES, at p. 449 of Vol. I.

(*f*) See L.G.A., 1933, ss. 195—218; 26 Statutes 412—424.

The council of a county borough differs from that of a non-county borough in that the council receive under sect. 88 of the L.G.A., 1929 (*g*), the share apportioned to them of the general contributions payable by the Exchequer under sects. 86, 87 of that Act (*h*). This is called the General Exchequer Grant of the county borough council, and is supplemented by the Additional Exchequer Grants payable under sect. 96 of the Act (*i*), and by the Supplementary Exchequer Grants payable under sect. 97 (*i*), for the purpose of adjusting between portions of a county borough which are separately rated, any decrease or increase of the poundage of rates caused by the operation of Parts I., V. and VI. of the Act of 1929. These and other grants will be dealt with in the title GENERAL EXCHEQUER GRANTS.

As respects the audit of their accounts, the position of a council of a county borough does not differ from that of a non-county borough; see titles AUDIT and AUDITORS, in Vol. I. [332]

**Functions of County Borough Council.**—The special functions exercised by a county borough council may be divided into (1) those transferred to them by the L.G.A., 1888, (2) those transferred by the L.G.A., 1894, and (3) those conferred by other Acts passed after 1888.

(1) By sect. 34 of the L.G.A., 1888 (*k*), a county borough council were invested with all the powers, duties and liabilities of a county council under the Act, subject to certain exceptions and modifications. By sect. 33 of the Act (*l*), where the police forces of a county and a county borough had been consolidated, this was to continue, but usually the council of a county borough would maintain a separate police force under sect. 191 of the Municipal Corpsn. Act, 1882 (*m*). Other powers, duties and liabilities of a county council which were transferred to county borough councils are to be found in sect. 3 of the L.G.A., 1888 (*n*), and included the duty of licensing places for music and dancing, the provision of institutions for mental patients (*o*), the establishment and maintenance of reformatory and industrial schools, the administration of the Acts relating to destructive insects, to fish conservancy, to wild birds, to weights and measures, the decision on claims arising under the Riot (Damages) Act, 1886, and the registration of the rules of scientific societies, charitable gifts, the certifying of places of religious worship, and the certification and recording of the rules of loan societies.

The repair of bridges and their approaches and main roads were transferred to the county borough council by sect. 34 (2) of the L.G.A., 1888 (*p*).

In regard to coroners, where the district of any county coroner was wholly situated within a county borough which was a borough having a separate court of quarter sessions, sect. 34 (4) of the Act of 1888 (*q*) directed that the coroner was to be appointed by the county borough council, and in other cases by a joint committee; see title CORONERS.

As to mental institutions, by sect. 240 of the Lunacy Act, 1890 (*r*),

(*g*) 10 Statutes 939.

(*h*) *Ibid.*, 938, 939.

(*i*) *Ibid.*, 944.

(*k*) *Ibid.*, 711.

(*l*) *Ibid.*. See title BOROUGH POLICE.

(*m*) *Ibid.*, 636.

(*n*) *Ibid.*, 688.

(*o*) See post.

(*p*) 10 Statutes 712.

(*q*) *Ibid.*, 713.

(*r*) 11 Statutes 99. See titles MENTAL DISORDER AND MENTAL DEFICIENCY, and MENTAL HOSPITALS.

sect. 27 of the Mental Deficiency Act, 1913 (*s*), and sect. 6 of the Mental Treatment Act, 1930 (*t*), county borough councils and county councils were local authorities for the provision and administration of asylums and other institutions for rate-aided patients under those Acts.

Industrial schools and reformatory schools are now administered under the provisions of the Children and Young Persons Act, 1933, as approved schools. See title APPROVED SCHOOLS. [332A]

(2) Sect. 32 of the L.G.A., 1894 (*u*), provided that some not very important functions of justices in petty sessions, or in quarter sessions which were transferred to district councils should pass also to county borough councils.

By sect. 27 (1) of that Act (*a*), functions transferred from the justices in petty sessions comprised the licensing of gang masters, the grant of pawnbrokers' certificates, and licensing of dealers in game, the grant of licences for passage brokers and emigrant runners, the abolition of fairs and the alteration of days for holding fairs and the execution of the Acts then in force relating to petroleum. By sect. 2 of the Petroleum (Consolidation) Act, 1928 (*b*), the local authority empowered to grant petroleum spirit licences is the district council, which no doubt includes county borough councils, as the Act was a consolidation Act, and these councils administered the earlier enactments. By sect. 11 of the Act of 1928 (*c*), the council of any borough or county may make bye-laws for the control of petrol filling stations. By sect. 27 (2) of the L.G.A., 1894 (*d*), the functions of quarter sessions transferred were those in relation to the licensing of knackers' yards (*e*).

By sect. 26 (7) of the Act of 1894 (*f*), county borough councils were given the additional powers conferred by the section for the protection of rights of way, rights of common and roadside wastes (*g*).

By sect. 62 of the L.G.A., 1894 (*h*), the council of an urban district (which includes a county borough) may, by a resolution, transfer to themselves the functions, property and liabilities of a burial board, or other authority under any of the Adoptive Acts (*i*), from a date to be specified in the resolution. As stated *ante*, p. 148, it has been held that this section extended to a county borough. [333]

(3) By sect. 269 of the L.G.A., 1933 (*k*), all existing civil functions and liabilities of vestries in a borough are transferred to the borough council, except so far as they relate to affairs of the Church or to charities; see title VESTRY. By sect. 270 (*l*), replacing sect. 10 of the L.G.A., 1888, the M. of H. may transfer to the council of a county borough by provisional order, any functions of conservators or any other public body not being the council of a county district. [334]

(4) The powers given to county borough councils by other Acts can only be described generally here and reference must be made to

(*s*) 11 Statutes 176. In Lancashire, Staffs and the West Riding of Yorks, mental hospital boards have been constituted by local Acts by whom the functions of the county council and county borough councils are performed.

(*t*) 23 Statutes 161.

(*u*) 10 Statutes 798.

(*a*) *Ibid.*, 797.

(*b*) 13 Statutes 1171.

(*c*) *Ibid.*, 1176. See titles AMENITIES; PETROL FILLING STATIONS; and PETROLEUM.

(*d*) 10 Statutes 797.

(*e*) See title SLAUGHTERHOUSES AND KNACKERS' YARDS.

(*f*) 10 Statutes 796.

(*g*) See title COMMONS.

(*h*) 10 Statutes 816.

(*i*) See title ADOPTIVE ACTS.

(*k*) 26 Statutes 449.

(*l*) *Ibid.*, 450; replacing in part s. 10 of L.G.A., 1888; 10 Statutes 692.

the local authorities administering the Acts under each title to obtain complete information. As has been said, the P.H.As., 1875–1932, are administered by county borough councils as “urban authorities.” By sect. 14 of the L.G.A., 1929 (*m*), the powers given to county borough councils by sect. 131 of the P.H.A., 1875 (*n*), to provide hospitals was extended to give power to provide places for the reception of pregnant women; by sect. 13 of the Act of 1929 (*o*), it was enacted that the council of every county borough was to consult with the governing bodies of the voluntary hospitals as to the provision of hospital accommodation; and by sect. 63 (*p*) schemes were to be made between county borough councils and county councils, if necessary, for the provision of hospital accommodation for infectious diseases. By sects. 21, 24 of the Act (*q*), the county borough councils and county councils became the authorities under the Births and Deaths Registration Acts, 1836–1926 (*r*), and the Marriage Acts, 1811–1898 (*s*), in place of the board of guardians.

By sect. 1 of the L.G.A., 1929, and sect. 2 of the Poor Law Act, 1930 (*t*), county borough councils and county councils became poor law authorities in place of the boards of guardians, and by sect. 3 of the latter such councils could be combined by order of the M. of H. for some of their work.

As far back as 1902, county borough councils became local education authorities in place of school boards, and by sect. 3 of the Education Act, 1921 (*u*), they are the authorities for both elementary and higher education in their area.

By sect. 3 of the Land Drainage Act, 1930 (*v*), county borough councils have representation on any catchment boards whose district runs into the borough.

The county borough council is also the authority for land planning under the Town and Country Planning Act, 1932 (*w*), and may form joint committees with other authorities for regional surveys under sect. 3 (1) of that Act. Under the Housing Acts, 1925 and 1930, the county borough council is the authority for the exercise of all powers under the Acts; in other areas the functions are divided between the county, non-county borough and those county district councils.

Other powers of county borough councils with regard to the making up of private streets are given by the Private Street Works Act, 1892 (*a*), as urban sanitary authorities, and with other powers of highway authorities, that of licensing drivers under sect. 4 of the Road Traffic Act, 1930 (*b*), and proceedings under the Road Traffic Act, 1934 (*bb*). [335]

**Officers and Staff.**—For details as to the law covering the officers and staff of county boroughs, the titles OFFICERS OF LOCAL AUTHORITIES and STAFF must be consulted (*c*). Provisions as to municipal

(*m*) 10 Statutes 891.

(*n*) 13 Statutes 678.

(*o*) 10 Statutes 891.

(*p*) *Ibid.*, 925.

(*q*) *Ibid.*, 898, 900.

(*r*) See 15 Statutes 700 *et seq.*

(*s*) See 11 Statutes 15 and 9 Statutes 324 *et seq.*

(*t*) 10 Statutes 883; 12 Statutes 969.

(*u*) 7 Statutes 131. See also the Education (Local Authorities) Act, 1931; 24 Statutes 173.

(*v*) 23 Statutes 581.

(*w*) S. 2; 25 Statutes 472.

(*a*) S. 3; 9 Statutes 194.

(*b*) 23 Statutes 611. County councils and county borough councils are licensing authorities; see s. 4 (8) of the Act.

(*bb*) 29 Statutes 584.

(*c*) Special articles deal with each of the principal officers and reference should be made to these also.

officers in general are contained in sect. 106 of the L.G.A., 1933 (*d*), by which the council of every borough is to appoint fit persons to be town clerk, treasurer, surveyor, M.O.H. and sanitary inspector or inspectors, and such other officers as the council think necessary for the efficient discharge of the functions of the council. By sub-sect. (2) of that section the council may pay such reasonable remuneration to an officer as they may determine. The qualifications and terms as to salary and the duties to be performed by the M.O.H. and the sanitary inspector are by sect. 108 to be prescribed by regulations of the M. of H. (*e*).

The offices of town clerk and treasurer of a borough must not be held by the same person (*f*). By sect. 110 of the Act of 1933 (*g*) the M.O.H. of a borough who is restricted by the terms of his agreement from engaging in private practice, and the sanitary inspector who must give his whole time to his work cannot be appointed for a limited time only, and can only be dismissed with the consent of the M. of H. or by the Minister himself.

By sect. 112 of the L.G.A., 1933 (*h*), districts, which in this section include a county borough, may be combined by order of the Minister to share a M.O.H., but no borough, county or non-county, or urban district with a population of 20,000 or more, and no borough having a separate court of quarter sessions may be included in a combination without the consent of the council (*i*). **[336]**

**Acquisition of Land.**—By sect. 157 of the L.G.A., 1933 (*k*), the council of any county borough or non-county borough may acquire land by agreement for the purposes of any of their functions under any public general Act, and by sect. 268 (*l*) may accept gifts of real or personal property. The power to hold land without licence in mortmain is conferred on municipal corpsn. by sect. 17 (3) of the Act (*m*). As well as real or personal property held thus by all local authorities, for the purposes of their statutory functions, municipal corpsn. may own corporate land, consisting of land long held by them on special trusts, and this, by sect. 305 (*n*), is defined as "land belonging to, or held in trust for, or to be acquired by or held in trust for, a municipal corpn. otherwise than for an express statutory purpose." By sect. 171 of the Act (*o*), where a municipal corpn. have no power under their charter to acquire land, or where the power conferred by their charter is exhausted, the council of the borough may, with the approval of the M. of H., acquire land by agreement as corporate land, in such manner and on such terms and conditions as the Minister approves. The borough council may also, under sect. 172 of the Act (*p*), let any corporate land on building, mining or any other lease, but the term of a building lease must not exceed ninety-nine years, of a mining lease sixty years, or of any other lease twenty-one years. See also the titles **CORPORATE LAND** and **ACQUISITION OF LAND (OTHER THAN COMPULSORY)**.

(*d*) 26 Statutes 361.

(*e*) *Ibid.*, 363. See also Sanitary Officers Order, 1926, S.R. & O., 1926, No. 552.

(*f*) S. 106 (5) of the L.G.A., 1933 ; 26 Statutes 302.

(*g*) 26 Statutes 364.

(*h*) *Ibid.*, 366.

(*i*) S. 112 (1), proviso ; 26 Statutes 366.

(*k*) 26 Statutes 391.

(*l*) *Ibid.*, 449.

(*n*) *Ibid.*, 466.

(*p*) *Ibid.*, 400.

(*m*) *Ibid.*, 313.

(*o*) *Ibid.*, 400.

(*p*) *Ibid.*, 400. See under title **CORPORATE LAND**.

By sect. 125 of the Act of 1933 (*q*), a borough council may acquire or provide and furnish halls, offices and other buildings, whether within or without their area, for transacting the business of the council and for public meetings and assemblies. The law in regard to the acquisition of land common to all local authorities, not being parish councils, is contained in sects. 157—166 of the L.G.A., 1933 (*r*), and is dealt with under the titles ACQUISITION OF LAND; COMPENSATION ON ACQUISITION OF LAND; COMPULSORY PURCHASE OF LAND. [387]

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(*q*) 26 Statutes 372.

(*r*) *Ibid.*, 391—398.

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## COUNTY BOROUGH APPORTIONMENT

*See GENERAL EXCHEQUER GRANTS.*

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## COUNTY BOROUGH, CREATION OR ALTERATION OF

|                      |             |                          |             |
|----------------------|-------------|--------------------------|-------------|
| INTRODUCTION — — — — | PAGE<br>156 | LOCAL ACTS — — — —       | PAGE<br>158 |
| PRESENT LAW — — — —  | 158         | ALTERATION OF BOUNDARIES | — 158       |

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*See also titles :*

ALTERATION OF AREAS;  
BILLS, PARLIAMENTARY AND PRIVATE;  
CHARTERS OF INCORPORATION;  
COMPENSATION FOR LOSS OF OFFICE;  
COUNTY BOROUGH;  
COUNTY OF A CITY OR TOWN;

COUNTY REVIEW;  
CREATION OF CITIES;  
FINANCIAL ADJUSTMENTS;  
INQUIRIES;  
ORDERS;  
TRANSFER OF OFFICERS.

**Introduction.**—By sect. 31 of the L.G.A., 1888 (*a*), those boroughs named in the Third Schedule to that Act, which either had a population of not less than 50,000 or were counties of a city or of a town, were created separate administrative counties for the purposes of the Act of 1888, and called county boroughs. The boroughs referred to, that were already counties of themselves, were such cities or towns as had, at some past time, been cut off from the surrounding county or counties at large. Bristol, for instance, received a charter making it a city and county in 1873, although it had earlier been created a borough

by charter. Other cities or towns mentioned in the list in the Third Schedule which were already counties of themselves, were Canterbury, Chester, Coventry, Exeter, Gloucester, Lincoln, Norwich, Worcester and York, which were cities, and the towns of Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Sheffield and Southampton. In 1888, Bath, Liverpool and Manchester were already cities, but not counties of themselves. Since 1888, Barnsley, Blackpool, Bournemouth, Burton-upon-Trent, Carlisle, Darlington, Dewsbury, Doncaster, Eastbourne, East Ham, Grimsby, Newport (Mon.), Oxford, Rotherham, Southend-on-Sea, Southport, Tynemouth, Wakefield, Wallasey, Warrington and West Hartlepool, already boroughs, have been converted into county boroughs. The county borough of Devonport has been amalgamated with Plymouth and the county borough of Hanley formed into the County Borough (now the City) of Stoke-on-Trent by its amalgamation with the latter and other authorities ; see titles **CREATION OF CITIES** and **COUNTY OF A CITY OR TOWN**.

New county boroughs could be created in two ways : (1) By a provisional order of the M. of H. under sect. 54 (1) (d) of the Act of 1888 (b), confirmed by a Bill in Parliament ; (2) by a local Act promoted by the council of the borough.

The formation of a county borough caused considerable disturbance in the finances of a county, as it took away from the county governed by the county council an area of high rateable value, the produce of the rates on which often exceeded the cost of the services administered in it by the county council. The Royal Commission on Local Government therefore devoted a large part of their First Report (c) to an examination of the question whether the creation of county boroughs by means of provisional orders was the best method. A great deal of criticism was received in evidence, the gist of which was (d) that before a proposal was submitted to Parliament, under that procedure, it was subjected to a process of investigation, and might receive a measure of approval, which in practice, though not in constitutional theory, gave an advantage to the promoters which their opponents could not counter-balance in Parliament. The procedure was also said (e) to be inelastic, ineffective and unduly expensive. The Royal Commission recommended that in future no county borough should be created except by a local Act, and also that a borough should not be permitted to promote a Bill for the purpose, unless it had a population of at least 75,000. As to the private Bill procedure, it was recommended that Bills for the creation of county boroughs should be exempt from the provisions of the Borough Funds Acts, 1872, and 1903 (f), requiring the consent of the electors to be obtained to the Bill. It was said (g) that it was desirable to maintain the requirements that notice of a proposal should be circulated by the local authority in the area, and that the sanction of special meetings of the local authority for the promotion of the Bill should be obtained, but that, in large towns, such as were here alone in question, the provision for a public meeting of the electors could not be carried into effect properly, and was open to abuse, and the provision for taking a poll seemed from experience to be on the whole ineffective and to have no advantage

(b) Repealed by the L.G. (County Boroughs and Adjustments) Act, 1926 ; see post.

(c) Cmd. 2506, published August 7, 1925, pp. 138—149.

(d) *Ibid.*, p. 452.

(f) 10 Statutes 559, 836.

(e) *Ibid.*, pp. 179, 180.

(g) Pp. 456, 487.

over a decision of the borough council themselves as an indication of the views of the electors. Moreover, in some cases a poll was a very costly proceeding.

The recommendations of the Royal Commission were embodied in the L.G. (County Boroughs and Adjustments) Act, 1926 (*h*). This by sect. 1 repealed sect. 54 (1) (d) of the L.G.A., 1888, made unlawful the creation of a county borough by provisional order, and by sect. 3 carried out the recommendations of the Royal Commission with regard to proceedings by means of local Act. [338]

**Present Law.**—Sect. 1 of the Act of 1926 has now been replaced by sect. 139 of the L.G.A., 1933 (*i*), which forbids the council of a borough to promote a Bill for the purpose of constituting it a county borough, unless the population of the borough is 75,000 or upwards. The general powers of a borough council to promote a Bill are dealt with in Part XIII. of the Act of 1933 (*k*), but sect. 255 (*l*) in that Part of the Act provides that the sections dealing with the necessary meeting and poll of local government electors in connection with the promotion of Bills are not to apply to a Bill promoted by the council of a borough, if its sole purposes are to constitute the borough a county borough, or to extend the area of a county borough, and for purposes incidental thereto. This replaced sect. 3 of the L.G. (County Boroughs and Adjustments) Act, 1926 (*m*). [339]

**Local Acts.**—No local Act for the creation of a county borough has been passed since 1926, and before then the provisional order procedure was far more common than the local Act procedure. The most recent local Act of this kind is the Doncaster Corpn. Act, 1926 (*n*), which was passed just before the L.G. (County Boroughs and Adjustments) Act, 1926. In the preamble to the local Act it is stated that Doncaster is a municipal borough under the local government of the mayor, aldermen and burgesses, that its population was estimated to be 56,000, and that it was deemed expedient that the borough should become a county borough. This was understood to be the opinion of the Royal Commission. Part II. of the Act deals with the constitution of the county borough and enacts that all the provisions of the L.G.A., 1888, respecting county boroughs are to apply as if the borough had been named in the Third Schedule to that Act, and as if the West Riding of Yorkshire had been named as the county in which the borough was situated. The county councillors and the county alderman who represented the borough were to vacate office. There were to be financial adjustments between the county and the county borough, and if agreement could not be come to, the M. of H. was to appoint an arbitrator. Secondary schools and certain other institutions in the borough were transferred to the borough council, and arrangements made as to debts and liabilities. Compensation to officers who were prejudicially affected by the Act was to be awarded. [340]

**Alteration of Boundaries.**—The law relating to the alteration of the boundaries of county boroughs is now contained in the L.G.A., 1933.

(*h*) 10 Statutes 878. Ss. 1—4 of the Act of 1926 have since been repealed by L.G.A., 1933.

(*i*) 26 Statutes 379.

(*l*) *Ibid.*, 444.

(*k*) *Ibid.*, 448—445.

(*m*) 10 Statutes 879.

(*n*) 16 & 17 Geo. 5, c. xxvii. See also the East Ham Corpn. Act; 4 & 5 Geo. 5 c. iii.

By sect. 140 (1) of that Act (*o*), which replaces sect. 54 of the L.G.A., 1888 (*p*), and sects, 2, 4 of the L.G. (County Boroughs and Adjustments) Act, 1926 (*q*), proposals may be made to the M. of H. by a county council for various alterations, one of which is the union of the county with any county borough, and by a borough council for (i.) the alteration or definition of the boundaries of the borough, or (ii.) the union of the borough with any other borough, or the inclusion in the borough of an urban or rural district, or (iii.) in the case of a county borough, the union of the borough with a county. The Minister must then cause a local inquiry to be held (*r*), unless for special reasons he thinks that the proposals ought not to be entertained, and he may make an order (*s*) for giving effect to the proposals, or for any other alteration he may think expedient, or he may refuse to make an order. The order is to be provisional only, and is not to have effect unless it is confirmed by a Bill in Parliament.

By sect. 140 (2) of the Act of 1933 (*t*), the county council may include in its proposals provisions for the alteration of the boundaries of a borough, and the borough may make proposals for the alteration of the boundaries of a county if the alteration is consequent on or incidental to the principal object of the proposal.

By sect. 140 (3) (*u*), if proposals are made by the council of a county borough for the extension of the area of the borough, the Minister must satisfy himself that that council have sent notices to the councils of the counties and of the county districts (*a*) affected, with a draft of the desired order, and he must not entertain the proposals if a notice of objection to procedure by provisional order has been sent to him by any such council within four weeks after the receipt of the notice of the county borough council and has not been withdrawn. If any notice of objection has been made or on any other ground the Minister (*b*) declines to entertain proposals involving the extension of the area of a borough, the application for the order is to be deemed to be a petition for leave to bring in a private Bill (*c*), and the notices published and served and the deposits made for the purposes of the proposed order, are to be held to have been published and served and made for a private Bill applying for similar powers, so far as they comply with the requirements of the Parliamentary standing orders. In such a case, the council of the county borough must at once inform all persons who have objected to the provisional order and other interested persons of their intention to proceed by private Bill. [341]

The boundary of a county borough may also be altered by the promotion of a private Bill for a local Act, but by sect. 255 (1) of the Act (*d*), where the sole purpose of such a Bill is to extend the area of a county borough, or convert the borough into a county borough, the

(*o*) 26 Statutes 379.

(*p*) 10 Statutes 730.

(*q*) *Ibid.*, 878, 879.

(*r*) As to INQUIRIES, see that title, and s. 290 of the L.G.A., 1933; 26 Statutes 459.

(*s*) As to ORDERS, see that title, and ss. 148—152 of the L.G.A., 1933; 26 Statutes 386—390.

(*t*) 26 Statutes 379.

(*u*) *Ibid.*, 380.

(*a*) Defined in s. 305 as meaning a non-county borough, urban district or rural district; 26 Statutes 466.

(*b*) S. 140 (4); 26 Statutes 380.

(*c*) See title BILLS, PARLIAMENTARY AND PRIVATE, and ss. 253 *et seq.* of the L.G.A., 1933; 26 Statutes 443—445.

(*d*) 26 Statutes 444.

approval of the local government electors as ascertained by a meeting or a poll held under the Ninth Schedule to the Act is not necessary. In every alteration of boundaries care must be taken that, as far as possible, the boundaries of an area of local government do not intersect the boundaries of any other area of local government (e).

Where a provisional order uniting boroughs is confirmed, a commission of the peace and a court of quarter sessions for the combined borough may be granted under sect. 140 (5) of the Act (f), by His Majesty in the same way as to any other borough.

On a joint representation being made by a county and a county borough council, the M. of H. may (g), after holding an inquiry, unless he is satisfied that an inquiry is unnecessary, make an order altering or defining the boundary between the county and the county borough. As the section allows the alteration to be made if the county council and county borough council agree to it, and no provision is made allowing a district council who disagree to resort to Parliament (h), it is obvious that it was intended that s. 143 should be resorted to only where the proposed alteration is a small one, agreed to by all parties affected by it. [342]

By sect. 144 of the Act of 1933 (i), every accretion from the sea which does not on June 1, 1934, form part of a parish, is annexed to and incorporated with both the parish it adjoins and also the county borough in which the parish is situate.

Sect. 145 (k) deals with alterations of local boundaries consequent on alterations of watercourses, and is the same for the areas of county boroughs as those of other local authorities.

Sect. 146 (l), which now contains the law as to subsequent county reviews allows a county borough to be affected by a review only by agreement between the county council and the county borough council ; see the decision in *R. v. Minister of Health, Ex parte Newhaven U.D.C.* (m), where a rural parish wished to be included in a neighbouring county borough, and it was held that sect. 46 of the L.G.A., 1929 (n), allowed a proposal to extend a county borough to be made only on the joint representation of the county and county borough council. [343]

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- (e) L.G.A., 1933, s. 153 ; 26 Statutes 391.  
 (f) 26 Statutes 380.  
 (g) L.G.A., 1933, s. 143 (2) ; 26 Statutes 383.  
 (h) Cf. s. 140 (4) of the Act ; *ibid.*, 380.  
 (i) *Ibid.*, 383. This section takes the place of s. 27 of the Poor Law Amendment Act, 1868 ; 10 Statutes 558.  
 (k) 26 Statutes 383.  
 (m) (1933), 31 L. G. R. 372 ; Digest (Supp.).
- |  |                         |
|--|-------------------------|
|  | (l) <i>Ibid.</i> , 384. |
|  | (n) 10 Statutes 916.    |

## COUNTY BRIDGE

*See BRIDGES.*

## COUNTY BUILDINGS

*See OFFICIAL BUILDINGS.*

# COUNTY COUNCIL

|                                      | <b>PAGE</b> |
|--------------------------------------|-------------|
| <b>STATUS AND CONSTITUTION</b>       | <b>161</b>  |
| MEMBERSHIP                           | 163         |
| FUNCTIONS                            | 164         |
| OFFICERS AND STAFF                   | 165         |
| COMMITTEES AND JOINT COMMITTEES      | 168         |
| <b>DELEGATION AND DEFAULT POWERS</b> | <b>170</b>  |
| MEETINGS AND PROCEEDINGS             | 170         |
| FINANCE                              | 173         |
| LAND AND OTHER PROPERTY              | 175         |
| LONDON                               | 177         |

*See also titles :*

ADMISSION TO MEETINGS ;  
 ALDERMEN ;  
 CHAIRMAN OF COUNTY COUNCIL ;  
 COMMITTEES ;  
 COUNTY COUNCILLOR ;  
 COUNTY ELECTORAL DIVISIONS ;

FINANCE ;  
 GRANTS ;  
 ISLES OF SCILLY ;  
 LOCAL GOVERNMENT ELECTORS ;  
 LONDON COUNTY COUNCIL ;  
 MEETINGS.

## STATUS AND CONSTITUTION

Sect. 1 of the L.G.A., 1888 (*a*), provided that a council should be established in every administrative county as defined by the Act, and should be entrusted with the management of the administrative and financial business of that county. In the Act, the term "administrative business" is used in contrast to "judicial business"; see *e.g.* the opening words of sect. 3 of the Act (*b*).

In sect. 100 of the Act (*c*) "administrative county" is defined to mean the area for which a county council is elected in pursuance of the Act, but the term is not (except where expressly mentioned) to include a county borough.

County councils were in most cases elected, in the first instance, for the county at large (exclusive of certain large boroughs, termed county boroughs) as bounded at the passing of the Act for the purpose of the election of members of Parliament; but sect. 50 of the Act (*d*) introduced a most important simplification by enacting that where a non-county borough or urban district was situate partly within and partly without the boundary of the county, the borough or district should be deemed to be within that county which contained the largest portion of its population according to the census of 1881 (*e*). It followed that although a few rural districts were in more than one county, no non-county borough or urban district could be in more than one county. [344]

To the rule that the county council were to be elected for the parliamentary county, the following additional exceptions were made :

- (1) By sect. 40 of the Act (*f*), the metropolis, *i.e.* the City of London, and the parishes and places in London, but outside the City, was constituted the administrative county of London, and

(*a*) 10 Statutes 686.

(*b*) *Ibid.*, 688.

(*c*) *Ibid.*, 760.

(*d*) *Ibid.*, 728.

(*e*) S. 50 is now repealed by L.G.A., 1933, Sched. XI., Part III.; 26 Statutes 518.

(*f*) 10 Statutes 718.

the administrative counties of Kent, Surrey and Middlesex were reduced to the portions of those counties which were not included in the administrative county of London.

- (2) The three Ridings of Yorkshire, the three divisions of Lincolnshire (*g*), the eastern and western divisions of Sussex under the County of Sussex Act, 1865 (*h*), the eastern and western divisions of Suffolk, the Isle of Ely, and the residue of the county of Cambridge, the Soke of Peterborough, and the residue of the county of Northampton, respectively, were to be separate administrative counties, the boundaries between the administrative counties being the boundaries between the portions, as existing at the appointed day for the Act for the purposes of the county rate, of the entire counties (*i*). [345]

After the L.G.A., 1888, had come into operation, the county of Southampton was divided as from April 1, 1890, by a provisional order under sect. 54 of the Act of 1888 (*j*), and the Isle of Wight, and the remainder of the county constituted separate administrative counties (*k*). [346]

Under the power conferred by sect. 49 of the Act of 1888 (*l*), the Local Government Board also made a provisional order for regulating the application of the Act to the Scilly Islands, and providing for other matters as regards those islands, under which a council named the Council of the Isles of Scilly was set up (*m*).

The administrative counties existing on June 1, 1934, when the L.G.A., 1933, came into operation, are enumerated in Part I. of the First Schedule to that statute (*n*). [347]

The position of a county council in relation to the non-county boroughs in the administrative county is in general governed by sects. 35—39 of L.G.A., 1888 (*o*), and later legislation. The classification under the Act of 1888 is as follows :

- (a) Larger Quarter Sessions boroughs. (Population of 10,000 or over according to the census of 1881.)
- (b) Smaller Quarter Sessions boroughs. (Population of under 10,000 at the above census.)
- (c) Quarter Sessions boroughs created after the commencement of L.G.A., 1888.
- (d) Boroughs with a separate commission of the peace.
- (e) All boroughs having a population of less than 10,000 according to the census of 1881.

For the present position as to the powers and duties of the county council in a non-county borough, reference should be made to the title dealing with the particular subject-matter. [348]

For the purposes of local government, England and Wales is divided by sect. 1 of the L.G.A., 1933 (*p*), into administrative counties and

(*g*) Namely, the parts of Holland, Kesteven and Lindsey respectively.

(*h*) 28 & 29 Vict. c. 37.

(*i*) See L.G.A., 1888, ss. 46 (1), 50 (1) (a) and 100 ; 10 Statutes 724, 728, 760.

(*j*) *Ibid.*, 730.

(*k*) This order was confirmed by 52 & 53 Vict. c. clxxvi.

(*l*) 10 Statutes 727.

(*m*) This order was confirmed by 53 & 54 Vict. c. clxxvi. S. 49 of the Act of 1888 is now replaced by L.G.A., 1933, s. 292 ; 26 Statutes 460.

(*n*) *Ibid.*, 470.

(*o*) 10 Statutes 718-717.

(*p*) 26 Statutes 306. There is no incorporation of the inhabitants of the administrative county. The College of Heralds is prepared to grant arms to a county council as such ; see title ARMS, COAT OF, at p. 429 of Vol. I.

county boroughs, and administrative counties are divided into county districts consisting of non-county boroughs, urban districts or rural districts (see title COUNTY DISTRICTS). Sect. 2 of the same Act continues a county council for each administrative county; the council consists of the chairman, county aldermen and county councillors, and has all such functions as are vested in the council by the L.G.A., 1933, or otherwise.

A county council is a body corporate, and has perpetual succession, and a common seal, and power to hold land without licence in mortmain (q).

The usual description of a county council is "the . . . County Council" or "the County Council of the Administrative County of . . ." The second style possibly accords better with sect. 2 (2) of the Act of 1933, than the first style. The practice varies.

A county council is a purely statutory body, and their rights, powers and duties are statutory; in this respect a county council differs from a municipal or common law corporation (r).

The formation of a new county council, the dissolution of a county council, or the merging of two or more county councils in a new council, can be effected by a provisional order of the Minister of Health under sect. 140 of the L.G.A., 1933 (s), providing for the union of a county with any other county, or with a county borough, or for the division of a county. An order under this section can only be made on a proposal put forward by a county council, a local inquiry on the proposal must be held on behalf of the Minister, and the provisional order must be confirmed by a bill in Parliament. [349]

#### MEMBERSHIP

(a) **Chairman and Vice-Chairman.**—The chairman of the county council is elected annually. He may be a county alderman, or a county councillor, or a person (not a member of the council) who is qualified to be an alderman or councillor; see sect. 3 (1) of the Act of 1933 (t). On the other hand, under sect. 5 (1), a vice-chairman must be selected from among the members of the council, viz. the county aldermen or councillors. See title CHAIRMAN OF COUNTY COUNCIL. [350]

(b) **County Aldermen.**—The county aldermen are elected by the county council under sect. 6 (1) of the Act (u), from among the county councillors, or persons qualified to be councillors. A county alderman cannot, as such, vote at the election of an alderman (sect. 7 (2)). The number of county aldermen is fixed by sect. 6 (2) of the Act at one-third of the total number of county councillors (a). On the election of a councillor as an alderman, the office of councillor becomes vacant by virtue of sect. 6 (3) of the Act on the newly-elected alderman accepting office as such, and a casual vacancy thus arises. As to the mode of election and term of office, see title ALDERMAN, Vol. I., p. 213. [350A]

(q) L.G.A., 1933, s. 2 (2); 26 Statutes 307.

(r) See *L.C.C. v. A.-G.*, [1902] A. C. 165; 13 Digest 366, 994.

(s) 26 Statutes 379.

(t) *Ibid.* 307.

(u) *Ibid.* 308.

(a) If the total number of councillors is not divisible by three, the number of aldermen is one-third of the highest number, so divisible, below the number of councillors. The Home Secretary is to give a direction for a reduction, if in any county the number of aldermen exceeds the statutory limit at the commencement of L.G.A., 1933 (*ibid.*, s. 6 (2)). Such an excess has sometimes arisen through the number of county councillors being cut down on the extension of a county borough by local Act or order.

(c) **County Councillors.**—The county councillors are elected by the local government electors for the county; for this purpose the county is divided into electoral divisions, and one county councillor is elected for each electoral division (*ibid.*, s. 10) (b). The number of county councillors cannot therefore exceed the number of electoral divisions. Alterations in the number of electoral divisions, and in the number of county councillors, may be effected by an order of the Home Secretary made either under sect. 11 of the L.G.A., 1933, or on a review by the county council of the existing electoral divisions under sect. 50 of the L.G.A., 1929 (c). Electoral divisions may also be altered under sect. 148 of the L.G.A., 1933 (d), as an incidental, consequential, or supplemental provision of an order for the alteration of counties, boroughs, districts or parishes.

It will be observed that an alteration of the number of electoral divisions may affect the number of county aldermen, although aldermen are not elected for, and do not represent, specific electoral divisions.

See also titles COUNTY COUNCILLOR, COUNTY ELECTORAL DIVISIONS.  
[351]

#### FUNCTIONS

When county councils were first constituted by the L.G.A., 1888, they took over from the quarter sessions of the county the administrative business of the justices described in sect. 3 of that Act (e). Of this business, the erection and maintenance of shire halls, assize courts, judges' lodgings, court houses, police stations and other county buildings, of asylums for pauper lunatics and of reformatory and industrial schools were perhaps the most important. The duty of maintaining main roads and county bridges was also transferred to county councils, and additional powers as to these roads and structures were conferred on them by sects. 6 and 11 to 13 of the Act (f). Functions in relation to the county police force were, however, transferred by sect. 9 of the Act (g) to the standing joint committee appointed by the quarter sessions and the county council. But the county council were responsible under sect. 3 of the Act for raising by precepts the necessary funds for the purposes of the county police force and of other county expenditure. [352]

Since the passage of the Act of 1888, the legislature have materially added to the functions discharged by county councils. Thus under the Education Act, 1902 (h), county councils became local education authorities, and under Part I. of the L.G.A., 1929 (i), the authorities for public assistance in substitution for boards of guardians. By sects. 30, 31 of the Act of 1929 (k), county councils became the highway authority in respect of all that part of the county comprised for the time being in a rural district, and in respect of all classified roads which at April 1, 1930, were vested in the council of a borough or urban district.

In addition to the matters indicated in the foregoing paragraphs, a county council exercise many other functions, of which the more important are as follows: the inspection of weights and measures (including the sale of coal); prevention of the adulteration of food and drugs; inspection of dairy cattle and regulation of the opening of shops; registration of nursing and maternity homes; prevention and treatment

(b) 26 Statutes 310.

(c) 10 Statutes 919.

(d) 26 Statutes 386.

(e) 10 Statutes 688.

(f) *Ibid.*, 691, 693—696.

(g) *Ibid.*, 692.

(h) 2 Edw. 7, c. 42. Repealed by the Education Act, 1921.

(i) 10 Statutes 883.

(k) *Ibid.*, 904, 905.

of disease (including tuberculosis, some infectious diseases and venereal disease) and general supervision of the work of the sanitary authorities ; welfare of the blind ; powers and duties in relation to agriculture (including agricultural education and land drainage) ; protection of wild birds ; control of theatres and cinematograph ; licensing of race tracks ; registration of theatrical agencies and performing animals ; registration and licensing of mechanically propelled vehicles, and the issue of drivers and local taxation licences. Powers with respect to the creation and alteration of districts and parishes, the establishment of parish councils, and the removal of difficulties in connection with elections are also conferred on the county council. [353]

The county council have minor legislative functions, such as the making under sect. 249 of the L.G.A., 1933 (*l*), of bye-laws for the good rule and government of the county, and the making of bye-laws or regulations for the special purposes prescribed in various statutes. [354]

A county council may, subject to the provisions of Part XIII. of the L.G.A., 1933 (*m*), promote or oppose a local or personal bill in Parliament. As to the advertisement of the meeting at which the necessary resolution is to be moved, the requisite majority, and the confirmatory meeting after the deposit of the Bill in the case of a promotion, see s. 254 of the L.G.A., 1933 (*n*), and the title **BILLS, PARLIAMENTARY AND PRIVATE**, Vol. II. The costs of promoting or opposing a Bill will be raised as expenses for general county purposes, unless the council, under sect. 257 of the Act (*o*) decide that they should be raised as special expenses. [355]

Sect. 276 of the Act of 1933 (*p*) authorises a county council to prosecute or defend any legal proceedings for the promotion or protection of the interests of the inhabitants of the administrative county. [356]

#### OFFICERS AND STAFF

A county council are bound by statute to appoint certain officers, the principal statutory officers being :

- (1) The clerk of the county council (L.G.A., 1933, sects. 98—101) (*q*). See title **CLERK OF THE COUNTY COUNCIL**.
- (2) The county treasurer, who under sect. 102 of the Act (*r*) must not be the clerk, or a partner, employer, or employee of the clerk. In practice, the county treasurer is sometimes a banking company, or the nominee of such a company, and the accounts of the council are kept by the county accountant, subject, in some cases, to the keeping of accounts under departmental arrangements. See title **FINANCIAL OFFICER AND TREASURER**.
- (3) The county M.O.H., who must be a duly qualified medical practitioner, holding a diploma in sanitary science, public health, or state medicine (L.G.A., 1933, sect. 103). He must not engage in private practice, and may not hold any other public appointment without the consent of the Minister of

(*l*) 26 Statutes 439.

(*m*) *Ibid.*, 443—445.

(*n*) *Ibid.*, 443.

(*o*) *Ibid.*, 445.

(*p*) *Ibid.*, 358—360. As to the relationship between the offices of clerk of the county council and clerk of the peace, and as to the position of clerks appointed before the commencement of L.G. (Clerks) Act, 1931, see titles **CLERK OF THE COUNTY COUNCIL** and **CLERK OF THE PEACE**.

(*r*) 26 Statutes 360.

Health. He cannot be dismissed without the consent of the Minister; but more than one county M.O.H. may be appointed (*ibid.*). See title MEDICAL OFFICER OF HEALTH.

- (4) The county surveyor (L.G.A., 1933, sect. 104). As to agreements with the M. of T. with respect to the appointment, retention or dismissal of the county surveyor, see sect. 17 (2) of the M. of T. Act, 1919 (s). These agreements are not affected by the provisions of the L.G.A., 1933; see sect. 124 (3) of that Act (t). See title COUNTY SURVEYOR.
- (5) An analyst under sect. 15 of the Food and Drugs (Adulteration) Act, 1928 (u), and an agricultural analyst, inspectors and official samplers under sect. 11 (1) of the Fertilisers and Feeding Stuffs Act, 1926 (a). See title ANALYST.
- (6) Veterinary and other inspectors and officers under sect. 35 of the Diseases of Animals Act, 1894 (b). See title VETERINARY INSPECTOR.
- (7) Inspectors of weights and measures under sect. 43 of the Weights and Measures Act, 1878 (c). See title INSPECTOR OF WEIGHTS AND MEASURES.

Substantially, the appointment of officers for superintending or assisting in the relief of the poor is compulsory, as, under sect. 10 of the Poor Law Act, 1930 (d), the Minister of Health may direct a county council to appoint such paid officers as he considers necessary for this purpose (e).

County councils are specifically empowered by sect. 148 of the Education Act, 1921 (f), to appoint the necessary officers for the administration of the Education Acts. [357]

In addition, a county council must under sect. 105 of the L.G.A., 1933 (g), appoint such other officers as the council think necessary for the efficient discharge of the council's functions. In general, officers hold office during the pleasure of the council, but subject to statutory protection in the case of certain officers such as the clerk and the county medical officer, who cannot be dismissed without the consent of the Minister of Health; see sects. 100, 103 (h). In the L.G.A., 1933, the term "officer" includes a servant (sect. 305) (i).

A county council may, under sect. 115 of the Act of 1933 (k), appoint a standing deputy of the clerk, treasurer, surveyor, or M.O.H., to act in the place of the officer whenever the office is vacant or the holder of the office is unable to act. Temporary deputies may be appointed to act in lieu of the foregoing officers, if no standing deputy of the officer has been appointed under sect. 115, or if the standing deputy is unable to act (*ibid.*, sect. 116) (l). [358]

(s) 3 Statutes 435.

(t) 26 Statutes 372.

(u) 8 Statutes 894.

(a) 1 Statutes 147.

(b) *Ibid.*, 408.

(c) 20 Statutes 379.

(d) 12 Statutes 974.

(e) For the special provisions relating to the appointment and dismissal of senior poor law officers, see titles CHAPLAIN; POOR LAW MEDICAL OFFICERS; PUBLIC ASSISTANCE OFFICERS; PUBLIC ASSISTANCE INSTITUTION MASTER; RELIEVING OFFICER.

(f) 7 Statutes 204.

(g) 26 Statutes 361.

(h) *Ibid.*, 359, 360.

(i) *Ibid.*, 465.

(k) *Ibid.*, 367.

(l) The provisions of L.G.A., 1933, ss. 98—117, do not affect the appointment or tenure of office of officers appointed under any other enactment, and no specially designated officer who could be appointed under any other enactment is to be appointed under the L.G.A., 1933 (see s. 118 of that Act; 26 Statutes 369).

The following provisions in sects. 119—123 of the L.G.A., 1933 (*m*), apply to officers of a county council generally, although an officer may be appointed under some statute other than that Act :

- (1) Security is to be given by, or taken for, officers likely to be entrusted with money, and the county council may defray the cost of such security (sect. 119).
- (2) Officers are accountable to the county council for money or property entrusted to their charge, and may be directed to make out a true account thereof (sect. 120).
- (3) A provision that reasonable notice shall be given by either party before an appointment is terminated, may be included in the terms of appointment of an officer who otherwise would hold office during the pleasure of the council ; any such provision, purporting to have been included in the terms of an officer's appointment before the L.G.A., 1933, came into operation, is made valid (sect. 121).
- (4) A county council may not appoint to any paid office (other than the office of chairman) any member of the council, or a person who was a member within twelve months prior to the making of the appointment (*n*) (sect. 122).
- (5) An officer who knows that he has any pecuniary interest, direct or indirect, in a contract made or proposed to be made by the county council, or by any committee, or joint committee, must, as soon as practicable give notice in writing to the council of his interest (sect. 123). An indirect pecuniary interest in a contract arises where the officer is a member of a company (*o*) or other body with which the contract is made or proposed, or if he is a partner of or is employed by the person with whom the contract is made or proposed to be made. The interest of the wife or husband of an officer may be the interest of the officer (*cf.* L.G.A., 1933, sect. 76 (2) and (3)). It should be observed that the necessity for disclosure arises even if the officer and his department are in no way concerned with the contract ; the test is the officer's knowledge (i.) that the contract has been made or is proposed, and (ii.) that he has a pecuniary interest. There is no exception in favour of the holder of shares in large undertakings, such as railway companies, or public utility undertakings, and as sect. 123 does not provide for giving a general notice of interest in companies of which the officer is a member (*cf.* sect. 76 (4)), an officer may repeatedly be compelled to give notice of interest in respect of the same company or undertaking.

An officer may not, under colour of his office, exact or receive any fee or reward whatsoever other than his proper remuneration (sect. 123 (2)).

An officer failing to comply with, or contravening, the fore-

(*m*) 26 Statutes 369—371.

(*n*) *Sembla*, a member may be appointed as a local registration officer under the Representation of the People Acts, as these appointments are made by the clerk of the county council, acting as registration officer.

(*o*) Subscribers to the memorandum of a company are deemed to have agreed to become members, and are to be entered in the register of members, and every other person who agrees to become a member and whose name is entered in the register of members, is a member (Companies Act, 1929, s. 25 ; 2 Statutes 788). Apparently a debenture holder is not a member of a company.

going provisions is liable on summary conviction to a fine not exceeding £50.

Officers holding office at the commencement of the L.G.A., 1933, are protected, as regards salary and tenure of office, but the provisions of sect. 121 as to notice before an appointment is terminated will extend to them; see sect. 124 (*p*). See also the general title OFFICERS OF LOCAL AUTHORITIES. [359]

#### COMMITTEES AND JOINT COMMITTEES

(See also titles COMMITTEES, JOINT BOARDS AND COMMITTEES)

The functions of a county council are mainly administrative, and these functions are carried out almost entirely through committees. Sect. 85 of the L.G.A., 1933 (*q*), gives the county council a general power of appointing committees, and of delegating to committees any of the functions of the council, except the power of issuing a precept for a rate, or of borrowing money. A committee appointed under this section (other than a finance committee) may include persons who are not members of the county council, but at least two-thirds of the members of the committee must be members of the county council. A county council is thereby enabled to avail itself of the services of specially qualified persons, who are not members of the council. Sect. 85 does not authorise the appointment of a committee for any purpose for which a committee must, or may, be appointed under any other statute; see sub-sect. (5). The principal committees which a county council must appoint under statutes other than the L.G.A., 1933, are enumerated below; the general scope of the functions of these committees is indicated by their titles, and, in general, their constitution is regulated by some formal scheme or order:

- (1) The Agricultural Committee, under sect. 7 of the M. of A. & F. Act, 1919 (*r*) ;
- (2) The County Valuation Committee, under sect. 18 of the R. & V.A., 1925 (*s*) ;
- (3) The Education Committee, under sect. 4 of the Education Act, 1921 (*t*) ;
- (4) The Maternity and Child Welfare Committee, under sect. 2 of the Maternity and Child Welfare Act, 1918 (*u*) ;
- (5) The Mental Deficiency Acts Committee, under sect. 28 of the Mental Deficiency Act, 1913 (*a*) ;
- (6) The Public Assistance Committee, under sect. 4 of the Poor Law Act, 1930 (*b*) ;
- (7) The Public Health and Housing Committee, under sect. 71 of the Housing, Town Planning, etc., Act, 1909 (*c*) ;
- (8) The Visiting Committee, under sect. 7 of the Mental Treatment Act, 1930 (*d*) ;

The county council must also appoint a committee under sect. 8 of the Old Age Pensions Act, 1908 (*e*), but that committee, when appointed, is an independent *ad hoc* authority.

(*p*) 26 Statutes 372.

(*q*) *Ibid.*, 352.

(*r*) 3 Statutes 453. By virtue of M. of A. & F. Act, 1919, s. 8 (3 Statutes 454), statutory sub-committees of this committee act as the statutory committee under the Small Holdings and Allotments Act, 1908, s. 50 (1 Statutes 273), and the executive committee under the Diseases of Animals Act, 1894, s. 31 (1 Statutes 406).

(*s*) 14 Statutes 842.

(*t*) 7 Statutes 132.

(*u*) 11 Statutes 743.

(*a*) *Ibid.*, 176.

(*b*) 12 Statutes 971.

(*c*) 10 Statutes 848.

(*d*) 23 Statutes 163.

(*e*) 20 Statutes 533.

Under sect. 86 of the L.G.A., 1933 (*f*), every county council must appoint a finance committee consisting wholly of members of the council, who are charged with the duty of regulating and controlling the finance of the county ; and subject to the provisions of enactments relating to the standing joint committee or any other statutory committee, no expenditure exceeding £50 may be incurred by a county council except upon a resolution of the council passed on an estimate submitted by the finance committee. The practical result is that the estimates of all committees must be embodied in a report of the finance committee, either with or without recommendations, and a considerable measure of co-ordination and control of expenditure can be secured by discussion between the finance committee and the spending committees ; but it is submitted that the finance committee should not attempt to criticise the details of estimates prepared by committees to whom functions have been delegated by the county council, but should consider and report upon the effect, on the county finances as a whole, of the expenditure of the several committees. The finance committee have in effect a power of veto over the expenditure of other committees, by declining to submit to the council an estimate covering the committee's expenditure, but this form of control should only be resorted to in extreme circumstances ; and even in such a case the better course would be for the finance committee to submit the estimate to the council accompanied by a report in which the recommendations of the finance committee are set out. [360]

The standing joint committee of the quarter sessions and of the county council are appointed under sect. 30 of L.G.A., 1888 (*g*). The committee consist of equal numbers of justices and of members of the county council, and deal with matters relating to the police, clerks to justices, joint officers, and the provision of accommodation for the quarter sessions and for the justices in petty sessions. Expenditure determined by the standing joint committee to be required, is to be paid out of the county fund, and the county council must provide accordingly. The county council cannot veto expenditure authorised or incurred by the standing joint committee (*h*). [361]

Most of the functions of the county council are delegated (with or without restrictions) to committees ; and in some instances (*e.g.* the licensing of theatres and cinematographs, and of places for the storage of explosives) powers are frequently delegated under sect. 28 (2) of the L.G.A., 1888 (*i*), to the justices in petty sessions. Reference should be made to the appropriate titles as to the foregoing powers and duties.

Provision is made by sect. 91 of the L.G.A., 1933 (*k*), for the appointment of a joint committee, either by county councils or by a county council and a borough, district or parish council for any purpose in which the councils are jointly interested.

The normal organisation of the staff of a county council is in departments, each charged with the administration of one or more services, and related to and controlled by the committee, or committees, to which the county council have delegated powers and duties in connection with the services. The departments of the clerk of the council, of the county solicitor (if a separate appointment), and of the chief financial officer, usually serve all committees of the council, and with the finance committee form the links which bind the various departments into one

(*f*) 26 Statutes 353.

(*g*) 10 Statutes 708.

(*h*) *Ex parte Somerset County Council* (1889), 58 L.J. (Q.B.) 513; 33 Digest 107, 719.

(*i*) 10 Statutes 707.

(*k*) 26 Statutes 355.

homogeneous body controlled by the county council as a whole. It appears that executive powers delegated to a committee may be withdrawn (*l*) (unless the delegation is governed by a statutory scheme), and in general, if delegation of executive powers to a statutory committee is limited or withdrawn, the council are under an obligation to refer to the committee for consideration and report all matters referred by statute to the committee (*m*). Apart from special instances of this kind, it seems clear that in extreme cases, a county council can control a recalcitrant committee. **[362]**

#### DELEGATION AND DEFAULT POWERS

Functions of conservators or of other public bodies arising within the administrative county may be transferred to the county council by a provisional order of the Minister of Health under sect. 270 of the Act of 1933 (*n*), confirmed by Parliament, but functions of borough or district councils cannot be so transferred, and no such order can be made unless it is approved in draft by the body from which powers are transferred.

Under sect. 274 of the Act of 1933 (*o*), a county council may delegate to a borough or district council (with the consent of that council), and subject to any restrictions or conditions imposed by the county council, any of the county council's functions, except (i.) functions for which the county council are required to appoint a statutory committee, and (ii.) the power of borrowing money or issuing a precept for the raising of a rate. Delegation cannot take place under this section, where other statutory powers of delegation exist (*p*). On the other hand, a district council may by agreement sanctioned by the M. of H. relinquish any of their functions in relation to public health to the county council (*q*).

A county council may in some cases assume, and in other cases be invested by an order of the M. of H. with the functions of a district council who have made default in exercising those functions. In such cases, as a rule, the county council exercise the functions at the expense of the defaulting district council (*r*). **[363]**

#### MEETINGS AND PROCEEDINGS

(*See also* titles ADMISSION TO MEETINGS and MEETINGS)

The meetings and proceedings of county councils are regulated by Parts I. and V. of the Third Schedule to the L.G.A., 1933 (*s*), and by standing orders made by the council.

By Part I. of the Third Schedule, an annual meeting must be held in a year which is a year for the election of county councillors (*t*) on March 16, or on such day within fourteen days after March 8 as the

(*l*) See *Huth v. Clarke* (1890), 25 Q. B. D. 391; 2 Digest 301, 699, and 33 Digest 17, 68.

(*m*) Cf. Education Act, 1921, s. 4; M. of A. & F. Act, 1919, s. 7; and Poor Law Act, 1930, s. 4.

(*n*) 26 Statutes 450.

(*o*) *Ibid.*, 451.

(*p*) E.g. under L.G.A., 1929, ss. 35 and 36 (highways); or under the Rats and Mice (Destruction) Act, 1919, s. 2 (1).

(*q*) 10 Statutes 922.

(*r*) L.G.A., 1929, s. 57 (3); 10 Statutes 923; L.G.A., 1894, ss. 16, 26, 63; 10 Statutes 788, 795, 816; P.H. (Smoke Abatement) Act, 1926, s. 7; 13 Statutes 1160; Milk and Dairies (Consolidation) Act, 1915; 8 Statutes 871; Housing Act, 1930, ss. 35, 52, 58; 23 Statutes 423, 431, 432.

(*s*) 26 Statutes 495, 500.

(*t*) Elections take place at intervals of three years, and an election was held in March, 1934.

council fix, and in any other year, on such day in the months of March, April or May as the council fix. The meeting is to be at 12 noon, or such other hour as the council fix. At least three other meetings are to be held on such dates, and at such times as the council fix, before March 8 in the following year. The meetings must be as nearly as possible at regular intervals (*u*), and may be held either within or without the county. All these meetings are for general business.

In fixing the dates of meetings, regard should be had to the necessity for passing the county council's budget, and settling the amount in the pound of the precepts for general and special county purposes by such a date as will enable these to be issued to the several rating authorities as required by the R. & V.A., 1925 (*v*).

Meetings of the county council may be convened at any time, by the chairman of the council, or if the chairman refuses to call a meeting after a requisition for that purpose signed by five members of the council has been presented to him, or, without so refusing, fails to call a meeting within seven days of the presentation to him of such a requisition, any five members of the council, on such refusal or at the expiration of seven days, may call a meeting.

Three clear days at least (*a*) before a meeting of the council, notice of the time and place of the intended meeting must be published at the offices of the council, and where the meeting is called by five members, the notice must be signed by those members and specify the business to be transacted at the meeting. Also, three clear days at least before the meeting, a summons to attend the meeting, specifying the business, and signed by the clerk, is to be left at, or sent by post to the usual place of residence of each member (*b*). With the exception of the statutory business to be transacted at the annual meeting, no business, other than that specified in the summons, may be transacted at a meeting.

The statutory business at the annual meeting is the election of the chairman and vice-chairman, and, in every third year (being the year for the election of county councillors), the election of aldermen ; see sects. 4, 5 and 7 of the Act of 1933 (*c*). In connection with the annual meeting, it should be noted that under sect. 3 (2) of the Act, the chairman holds office until his successor becomes entitled to act as chairman, that is to say until the acceptance by his successor of the office of chairman in accordance with sect. 61 of the Act (*d*). The vice-chairman holds office until immediately after the election of the chairman at the next annual meeting of the county council (sect. 5 (*3*)).

By virtue of para. 3 of Part I. of the Third Schedule to the Act (*e*),

(*u*) If an annual meeting and three other meetings are appointed, they should be held at intervals of about three months ; more frequent meetings can be fixed, or special meetings summoned as may be necessary.

(*a*) See *infra*, at p. 173, as to annual budget and precepts.

(*a*) Longer notice may be necessary to comply with statutes or orders dealing with special matters, e.g. the adoption of the L.G. and other Officers' Superannuation Act, 1922. Notice by newspaper advertisement may be necessary, e.g. L.G.A., 1933, s. 254 (promotion of or opposition to Parliamentary Bills).

(*b*) Failure to deliver a summons to a member does not invalidate the meeting, see proviso to para. 2 (3) of Part I. of the Third Schedule of the L.G.A., 1933. Para. 2 (4) repeats the effect of s. 80 (4) of the L.G.A., 1888, in requiring notice to be given of any proposal to incur a liability exceeding £50, but in the past this requirement has been frequently ignored.

(*c*) 26 Statutes 308, 309.

(*d*) *Ibid.*, 337.

(*e*) *Ibid.*, 496.

the chairman presides at a meeting of a county council, or in his absence, the vice-chairman; in the absence of the vice-chairman the members must choose an alderman to preside; and in the absence of all the aldermen, the members must choose a county councillor to preside. As the wording of this paragraph is mandatory, it appears that if a qualified person is chosen as chairman of the meeting, he must act as such. See title CHAIRMAN OF COUNTY COUNCIL.

The quorum of a county council is one-fourth of the whole number of members, but if more than one-third of the members of the council become disqualified (*f*) at the same time, then until the number of members in office is increased to not less than two-thirds of the total number of members of the council, the quorum is one-fourth of the number of qualified members (*g*).

Subject to special statutory requirements, decisions are taken by a simple majority vote (L.G.A., 1933, Third Schedule, Part V., para. 1 (*h*)); the method of voting may conveniently be laid down in standing orders. The person presiding has a second or casting vote (*ibid.*, para. 2). The names of members present at a meeting are to be recorded (*ibid.*, para. 2). Minutes of the proceedings are to be drawn up and entered in a minute book (*i*), and are to be signed at the same or next ensuing meeting of the council by the person presiding, and any minute purporting to be so signed is to be received in evidence without further proof (*ibid.*, para. 3 (*i*)). It would appear that a minute can only be proved by production of the actual minute book. Sect. 279 (1) of the Act of 1933 (*k*) places in the custody of the clerk all records and documents relating to the business of the county council, and he, or a member of his staff authorised by him, should produce any minute book of the county council in legal proceedings, but the person producing the minute books need not have been present at the transaction of the business recorded in the minutes, nor need the handwriting or status of the person signing the minutes be proved.

Para. 3 of Part V. of the Third Schedule (*l*), provides that until the contrary is proved, a meeting of a county council, in respect whereof signed minutes are produced, is deemed to have been duly convened and held, and the members present are deemed to have been duly qualified. This provision also extends to committees of the county council, with the addition, in the case of committees, that on the production of a signed minute book, the committee is deemed (until the contrary is proved) to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

A county council are authorised by para. 4 of the same Part of the Third Schedule to make, vary and revoke standing orders for the regulation of their proceedings and business (*ll*). In general, standing orders provide for the orderly and speedy despatch of business at

(*f*) *Semblé*, disqualified from membership and not merely disqualified from voting on the question before the council.

(*g*) L.G.A., 1933, Third Schedule, Part I., para. 4, and Part V., para. 6 ; 26 Statutes 496, 501.

(*h*) *Ibid.*, 500.

(*i*) If a loose-leaf book, or similar device, is used as a minute book, care should be taken by dating, paging and consecutive numbering of minutes, to guard against the abstraction or loss of signed minutes.

(*l*) 26 Statutes 453.

(*ll*) *Ibid.*, 501.

(*lll*) Model standing orders have been passed by the M. of H. dated December 31, 1934. For full treatment of these see title MEETINGS.

meetings, the limitation of debate to a motion or amendment before the council, or to matters of which due notice has been given, and are designed to prevent obstruction or the introduction of irrelevant matters. The internal procedure of the county council is usually regulated by standing orders as to finance, contracts, appointment and remuneration of officers, reports, distribution and publication of official papers, and other like matters. Apparently a standing order cannot deprive a member, officer, ratepayer, or local government elector of any statutory right or privilege, but it would seem that the failure by a county council to comply with their standing orders does not give rise to a right of action by a private individual, though proceedings may apparently be taken as for a public injury (*m*). [364]

Apart from the statutory business to be dealt with at the annual meeting (*vide*, p. 171, *ante*), the agenda paper of a meeting of a county council usually includes the following items :

- (1) To call the roll (unless members are required to sign an attendance book).
- (2) To receive the report of the standing joint committee. This report does not require adoption, and should be laid on the table ; the better opinion seems to be that the county council cannot debate this report, and nothing can be moved thereon, but, as a matter of courtesy, the chairman of the standing joint committee may answer questions arising out of the report.
- (3) To receive and adopt the reports of the several committees. These motions, and motions to reject, refer back, or amend the reports, or parts thereof, are subject to standing orders.
- (4) Motions of which due notice has been given by members.
- (5) A motion that the common seal be affixed to documents necessary for carrying into effect the reports as adopted.
- (6) To order payments out of the county fund. [365]

#### FINANCE.

(See also title FINANCE)

The financial arrangements of a county council are governed by sects. 180—184 of the L.G.A., 1933 (*n*). The main governing principle is that a non-county borough or district should not contribute towards the cost of services for which the county council are not the authority for that borough or district, or from which the area in question derives no benefit (*o*). By sect. 180 of the L.G.A., 1933 (*p*), the expenses of the county council are either classed as expenses for general county purposes (*i.e.* charged on the whole administrative county), or as expenses for special county purposes (*i.e.* charged on part of the administrative county). All receipts and payments are to be carried to, or paid from, the county fund, separate accounts being kept for general county purposes, and each special county purpose, except that where as respects any two or more special county purposes the part of the county chargeable is the same ; one separate account may be kept for those

(*m*) *Vide, Watson v. Hythe Borough Council* (1906), 70 J. P. 153 ; 28 Digest 495, 974 ; and *Weir v. Fermanagh County Council*, [1918] 2 I. R. 63, 193 ; 33 Digest 107, sect. 4. Further as to standing orders, and as to action where a member refuses to comply with standing orders, see title MEETINGS.

(*n*) 26 Statutes 404—407.

(*o*) Cf. Land Drainage Act, 1930, s. 23, as to meeting precepts issued to the county council by catchment boards ; 23 Statutes 545.

(*p*) 26 Statutes 404.

purposes (*ibid.*, s. 181). An annual budget is to be prepared before the commencement of each financial year, and the amounts to be raised by precepts on rating authorities, in the first and second halves of the financial year, are to be calculated; but a revision of the estimate may, if necessary, be made before the end of the first six months of the financial year (*ibid.*, s. 182). A county council are not a rating authority, and derive their income mainly from rates made by rating authorities to meet precepts issued by the county council under sect. 183 of the Act of 1933 (*q*), and sect. 9 of the R. & V.A., 1925 (*r*), Government grants, rents, and miscellaneous income from sales, fees, fines and expenses repaid by or recovered from the Government or local authorities and private individuals. The procedure on making payments from the county fund is set out in sect. 184 of the L.G.A., 1933 (*s*); in practice transfers are made from the county fund to spending accounts for financing routine administrative expenditure. See also title COUNTY ACCOUNTS. [366]

The borrowing of money and the issue of stock by county councils was formerly regulated by sects. 69, 70 of the L.G.A., 1888 (*t*) and the County Councils Mortgages Act, 1909 (*u*), but all these enactments (except small portions of sect. 69 of the Act of 1888) are repealed by the L.G.A., 1933, and replaced by Part IX. (sects. 195 to 218) of that Act (*a*).

Sect. 195 of the Act of 1933, confers on county councils, in common with borough and district councils, a general power of borrowing, with the consent of the M. of H., for acquiring any land or erecting any building which the county council have power to acquire or erect, or for the execution of any permanent work, the provision of any plant or the doing of any other thing which the council have power to execute, provide or do, if in the opinion of the Minister, the cost of carrying out that purpose ought to be spread over a term of years. If, however, the money is borrowed for the purposes of any enactment or statutory order relating to the supply of electricity, the Electricity Commissioners are substituted in sect. 195 for the Minister by the definition of "sanctioning authority" in sect. 218 of the Act (*b*). Similarly, the Minister of Transport is substituted for the M. of H., if the purpose should be tramways, light railways or the running of public service vehicles by local authorities under Part V. of the Road Traffic Act, 1930 (*c*).

Further information as to the new code of borrowing in the L.G.A., 1933, will be found in the title BORROWING. As to the issue of stock, see the title STOCK. [367]

A county council may also under sect. 195 of the Act (*d*), borrow money without the Minister's sanction for the purpose of lending it to a parish council who have been authorised to raise a loan. The parish council thus obtain the loan on easier terms than if they had themselves borrowed the money. As the borrowing by the parish council will already have been sanctioned by the Minister and the county council, it was unnecessary to require the borrowing by the county council to obtain further sanction from the Minister.

The borrowing by the county council will, however, be subject to

(*g*) 26 Statutes 406.

(*r*) 14 Statutes 627.

(*s*) 26 Statutes 406.

(*t*) 10 Statutes 742—744.

(*u*) *Ibid.*, 845.

(*a*) 26 Statutes 412 *et seq.*

(*b*) *Ibid.*, 424.

(*c*) 23 Statutes 678 *et seq.* A county council are not a local authority for this purpose; see s. 108 of the Act of 1930.

(*d*) 26 Statutes 412.

the conditions imposed by the County Councils (Loans for Advances to Parish Councils) Order, 1934 (e). These require the loan raised by the county council to be discharged not later than one year after the parish council's loan is required to be paid off, the money lent to the parish council to be repaid to the county council within the period for which the parish council have power to borrow by equal yearly or half-yearly instalments of principal, or of principal and interest combined, and the repayments of principal to be applied by the county council in or towards the repayment of their loan, or if that loan was raised by an issue of stock, in or towards the redemption of the stock. [368]

#### LAND AND OTHER PROPERTY

By sect. 64 of the L.G.A., 1888 (f), all property held by or on behalf of the quarter sessions of a county, for any public county uses or purposes, was transferred to the county council; but excepted from the transfer were (i.) then existing records of, or in the custody of, quarter sessions (subject to any order of the court), (ii.) property belonging to a charity, and (iii.) pictures or chattels presented to the justices or bought out of their own funds or otherwise belonging to them, and not held for public county purposes. [369]

Sect. 125 of the L.G.A., 1933 (g), allows a county council to acquire, or provide and furnish halls, offices and other buildings, either within or without the administrative county, for the transaction of their business, and for public meetings or assemblies; land may be acquired compulsorily for this purpose.

Part VII. of the L.G.A., 1933 (h), constitutes a code governing the acquisition by a county council (whether by agreement or compulsorily) of land, and the letting, sale or exchange thereof. But by sect. 179 of the Act (i), these provisions do not (i.) affect the provisions as to the acquisition, appropriation or disposal of land contained in the following statutes or in any statutory order thereunder, or (ii.) authorise a county council to effect under the L.G.A., 1933, any transaction which could be effected under any such provisions. The statutes in question are those mentioned in the Seventh Schedule to the Act of 1933 (k), and are as follows :

- The Electricity (Supply) Acts, 1882 to 1933 (l);
- The Lunacy and Mental Treatment Acts, 1890 to 1930 (m);
- The Technical and Industrial Institutions Act, 1892 (n);
- The Military Lands Acts, 1892 to 1903 (o);
- The Public Libraries Acts, 1892 to 1919 (p);
- The Light Railways Acts, 1896 and 1912 (q);
- The Allotments Acts, 1908 to 1931 (r);
- The Small Holdings and Allotments Acts, 1908 to 1931 (s);
- The Development and Road Improvement Funds Act, 1909 (t);
- The Air Navigation Act, 1920 (u);

(e) S.R. & O., 1934, No. 621, made under s. 201 (1) of the L.G.A., 1933 ; 26 Statutes 416.

(f) 10 Statutes 738.

(g) 26 Statutes 372.

(h) *Ibid.*, 391 *et seq.*

(i) *Ibid.*, 403.

(k) *Ibid.*, 509.

(l) 7 Statutes 686 ; 26 Statutes 137.

(m) 11 Statutes 17 ; 23 Statutes 154.

(n) 7 Statutes 289.

(o) 17 Statutes 574.

(p) 13 Statutes 850.

(q) 14 Statutes 252, 314.

(r) 1 Statutes 257 ; 24 Statutes 66.

(s) *Ibid.*, 257 ; *ibid.*, 66.

(t) 9 Statutes 207.

(u) 19 Statutes 192.

The Education Acts, 1921 to 1933 (a) ;  
 The Housing Acts, 1925 and 1930 (b) ;  
 The Town and Country Planning Act, 1932 (c) ; and  
 Any local Act.

By sect. 157 of the Act of 1933 (d), a county council are invested with a general power of acquiring land by agreement (whether by purchase, lease, or exchange) and the land may be within or without the county. This power includes the acquisition of land for police and other functions exercised through the standing joint committee. Gifts of real or personal property may be accepted by a county council under sect. 268 of the L.G.A., 1933 (e). With the consent of the appropriate Minister, sect. 158 of the Act (f) allows land to be acquired by agreement in advance of requirements, and, until required for the purpose for which it is acquired, to be used for any of the purposes of the county council. [370]

Two methods of obtaining power to buy land compulsorily are referred to in the Act, (i.) by a provisional order made under sect. 160 of the Act (g) by the M. of H. and confirmed by a Bill passed by Parliament, and (ii.) by an order made by the county council under sect. 161 of the Act (h), and confirmed by the Minister.

A general power of obtaining authority to purchase land compulsorily, whether within or without the county, for the purpose of any functions of the county council under the Act of 1933, or any other public general Act, including functions exercised through the standing joint committee, is conferred by sect. 159 of the Act of 1933 (i). This section will not cover a compulsory purchase of land under sect. 158 in advance of requirements, because that section is expressly limited to the acquisition of land by agreement, and sect. 179 (f) of the Act (k) prevents any doubt arising as to whether this limitation was removed by sect. 159 of the Act.

Procedure by provisional order confirmed by Parliament will usually be the appropriate procedure, because sect. 160 (1) of the Act (l) prescribes that this shall be followed wherever a power of authorising a compulsory purchase is conferred by the Act of 1933, or by subsequent legislation authorising compulsory purchase by provisional order procedure or by any enactment or statutory order in force immediately before that Act operated, which incorporates or applies sect. 176 of the P.H.A., 1875 (m). That section was applied to the purchase of land by county councils for any of their powers and duties by sect. 65 (2) of the L.G.A., 1888 (n). The reason why the procedure for compulsory purchase by order of the county council to be confirmed by the Minister is set out in sect. 161 of the Act of 1933 (o), is to allow Parliament in passing future Bills giving county councils fresh powers to choose which of the two procedures should be applied by the Bill. [371]

Further as to compulsory purchase, see title COMPULSORY PURCHASE OF LAND, and titles dealing with particular statutory powers and duties.

Land belonging to a county council, and not required for the pur-

(a) 7 Statutes 130 ; 24 Statutes 173 ; 26 Statutes 130.

(b) 13 Statutes 1001 ; 23 Statutes 396.

(c) 25 Statutes 470.

(d) 26 Statutes 391.

(e) *Ibid.*, 449.

(f) *Ibid.*, 392.

(g) *Ibid.*, 393.

(h) *Ibid.*, 394.

(i) *Ibid.*, 392.

(k) *Ibid.*, 404.

(l) *Ibid.*, 393.

(m) 13 Statutes 700.

(n) 10 Statutes 739 ; and repealed except as to London by the L.G.A., 1933.

(o) 26 Statutes 394.

poses for which it is held for the time being, may be appropriated under sect. 163 of the L.G.A., 1933 (*p*), for any other purpose for which the council are authorised to acquire land. The consent of the Minister of Health is required, and such adjustment as the Minister may direct is to be made in the accounts of the council. A council are not to create or permit a nuisance on appropriated land, or to sink a well for a public water supply, or construct a cemetery, burial ground, destructor, sewage farm, or infectious disease hospital, on the land, unless the works are authorised by the Minister after local inquiry and consideration of objections. Appropriation does not of itself release the land from covenants restricting its use in the hands of the council, but by sub-sect. (2) of sect. 163 of the Act (*q*), if land was acquired originally under an enactment or statutory order incorporating the Lands Clauses Acts, any work executed on the land after appropriation is deemed, for the purposes of sect. 68 of the Lands Clauses Consolidation Act, 1845 (*r*), to have been authorised by the enactment or order under which the land was acquired. The effect of this provision is to make compensation payable, on the appropriation, as though the original acquisition had been for the purpose for which the land is subsequently appropriated.

A county council may let land under sect. 164 of the L.G.A., 1933 (*s*), for any term, with the consent of the M. of H., or for a term not exceeding seven years without such consent. A county council may with the consent of the Minister, sell surplus land or may exchange any land for other land (L.G.A., 1933, sect. 165). The person from whom the land was originally purchased by the county council in exercise of its powers under the L.G.A., 1933, will have no right of pre-emption on a sale of the land by the county council, as sects. 127—132 of the Lands Clauses Act, 1845 (*t*), are excluded by sect. 176 of the Act of 1933 (*u*) from application to a purchase by agreement, and by sects. 160 (6), 161 (2) of the Act (*a*), sects. 127—132 (*supra*) do not apply where compulsory purchase orders are made under the Act of 1933.

Capital money received under sects. 164 and 165 (*supra*) is to be applied in such manner as the Minister may approve (L.G.A., 1933, sect. 166). [372]

#### LONDON

See title LONDON COUNTY COUNCIL.

(*p*) 26 Statutes 396.

(*g*) *Ibid.*, 396.

(*r*) 2 Statutes 1134.

(*s*) 26 Statutes 397.

(*t*) 2 Statutes 1158—1160.

(*u*) 26 Statutes 403.

(*a*) *Ibid.*, 394.

## COUNTY COUNCIL, CHAIRMAN OF

*See* CHAIRMAN OF COUNTY COUNCIL.

## COUNTY COUNCIL, CLERK OF

*See* CLERK OF COUNTY COUNCIL.

## COUNTY COUNCILLOR

|                           | PAGE |                               | PAGE |
|---------------------------|------|-------------------------------|------|
| QUALIFICATIONS FOR OFFICE | 178  | INTEREST IN CONTRACTS, ETC.   | 182  |
| ELECTION                  | 179  | RIGHTS, DUTIES AND PRIVILEGES | 183  |
| TERM OF OFFICE            | 179  | LONDON                        | 186  |
| DISQUALIFICATIONS         | 180  |                               |      |

*See also titles : COUNTY COUNCIL ;  
COUNTY ELECTORAL DIVISIONS ;  
ELECTIONS ;  
LOCAL GOVERNMENT ELECTORS.*

Most of the law as to county councillors is consolidated in the L.G.A., 1933, which has assimilated the qualifications and disqualifications for election to the three offices of county councillor, borough councillor and district councillor.

**Qualifications for Office.**—A person (man or woman) is qualified to be elected as a county councillor if he is of full age, is a British subject (*a*) and fulfils one of the following conditions :

- (a) is a local government elector for the administrative county ; or
- (b) owns freehold or leasehold land in the same area ; or
- (c) has during the whole of the twelve months preceding the day of election resided in the administrative county ;

provided that no disqualification (*b*) attaches to the person by virtue of the L.G.A., 1933, or any other statute (*c*).

As respects the ownership qualification no minimum area or value of land is laid down, nor is a minimum term of years specified in relation to leasehold land, but it would appear that a leasehold qualification must be in respect of a term of years absolute constituting a legal estate under sect. 1 of the Law of Property Act, 1925 (*d*). “Residence” for the purposes of qualification should, it is submitted, be interpreted in a similar manner to the terms “reside” and “residence” as used for the purposes of the Representation of the People Acts (*e*).

A retiring county councillor is eligible for re-election, unless he is disqualified or no longer qualified (*f*). [373]

(*a*) As to who is a British subject, see British Nationality and Status of Aliens Acts, 1914 to 1922; 1 Statutes 185. A British subject by naturalisation may be qualified.

(*b*) See “Disqualifications,” *infra*, p. 180.

(*c*) L.G.A., 1933, s. 57; 26 Statutes 333.

(*d*) 15 Statutes 177. The Representation of the People Act, 1918, s. 10, which preserved the ownership qualification for membership of a local authority, is repealed by L.G.A., 1933, Sched. XI.; L.G.A., 1933, s. 57 (*b*), appears to preserve the ownership qualification in respect to the legal estates now capable of subsisting, i.e. excluding copyhold and similar tenures abolished by Law of Property Acts, 1922 and 1925.

(*e*) 7 Statutes 548 *et seq.*

(*f*) L.G.A., 1933, s. 58; 26 Statutes 334.

**Election.**—A county councillor is elected by the local government electors (*g*) for the electoral division of the administrative county for which he has been nominated. The “administrative county” is the area for which the county council are elected (*h*), and thus excludes any county borough, and may, as in the case of East and West Suffolk and East and West Sussex, consist only of a division of the county at large. The administrative county is divided into electoral divisions, each of which returns one county councillor, and for each of which a separate election is held (*i*). An electoral division may be divided into polling districts (*k*), but no local government elector may give more than one vote in the same electoral division (*l*). Nor can an elector who is on the register in more than one electoral division vote for more than one electoral division at a general election of county councillors, although he may vote in any electoral division for which he is registered at an election to fill a casual vacancy (*m*). But he may not vote more than once at an election of any one county councillor (*n*).

As to the conduct of elections, see title ELECTIONS and L.G.A., 1933, sect. 15 and Second Schedule (*o*).

A county councillor may be elected to fill a casual vacancy, and in such case the day of election is to be a date within thirty days from the date of a declaration by the High Court, or by the county council, declaring the office vacant, and in any other case within thirty days after notice in writing of the vacancy has been given to the clerk of the county council by two local government electors for the county (*p*). If the casual vacancy occurs within six months before the ordinary day of retirement of county councillors, a special election is not to be held, but the vacancy is filled at the next ordinary election, unless, by reason of the casual vacancy, the total number of unfilled vacancies in the membership of the county council (*i.e.* chairman, aldermen and councillors) exceeds one-third of the full complement of the council.

[374]

**Term of Office.**—A county councillor holds office for three years, and all the councillors retired together on March 8, 1934, and in every subsequent third year (*q*). If the day of retirement should fall on a Sunday, it is postponed to the Monday following (*r*). County councillors differ from borough councillors in that only one councillor is elected for each constituency and that all councillors retire together on the same day.

A county councillor elected to fill a casual vacancy retires on the

(*g*) *I.e.* the persons entitled under the Representation of the People Acts (7 Statutes 548 *et seq.*) to vote at the election (L.G.A., 1933, s. 12; 26 Statutes 312). See also title LOCAL GOVERNMENT ELECTORS.

(*h*) See ss. 1, 100 of the L.G.A., 1888; 10 Statutes 686, 760.

(*i*) L.G.A., 1933, ss. 8, 10; 26 Statutes 310.

(*k*) *Ibid.*, s. 13.

(*l*) *Ibid.*, s. 12. Voters lists are marked appropriately by the registration officer so as to prevent an elector qualified in more than one parish from voting more than once in the same division.

(*m*) Representation of the People Act, 1918, s. 8 (2); 7 Statutes 554.

(*n*) L.G.A., 1933, s. 12 (2); 26 Statutes 312.

(*o*) 26 Statutes 312, 474.

(*p*) L.G.A., 1933, s. 67; 26 Statutes 341. As to the date on which a casual vacancy is deemed to arise, see *ibid.*, s. 65. The “day of election” in an election of county councillors is the polling-day; the notice of election must be published on or before the twentieth day (excluding Sundays, etc.) before the day of election (*ibid.*, Second Schedule, Part II.).

(*q*) *Ibid.*, s. 8; 26 Statutes 310.

(*r*) *Ibid.*, s. 295; *ibid.*, 462.

date upon which the councillor in whose place he is elected would normally have retired (s).

Until he has made and delivered to the clerk of the county council a declaration of acceptance of office, a county councillor cannot act as such, except for the purpose of taking the declarations of other members (t); the declaration is in a form prescribed by the Home Secretary (u), and may be taken before (1) two members of the county council, or (2) the clerk of the county council, or (3) a justice of the peace or magistrate (w), or (4) an English commissioner for oaths, or (5) a British consular officer (a). If the declaration is not made and delivered to the clerk of the county council within two months from the day of election, the office of county councillor becomes vacant at the expiration of that time (a).

A county councillor may resign his office at any time by written notice, signed by him and delivered to the clerk of the county council; the resignation takes effect on receipt of the notice by the clerk (b). The notice may be either left at the council's office or sent there by post in a prepaid letter (c). No fine is now payable on resignation.

A borough councillor can resign from a committee at any time without vacating his office of borough councillor (d), and this decision seems to be applicable to a county councillor.

A county councillor may lose office by a failure to attend any meetings of the council during six consecutive months; but attendance at a meeting of any committee or sub-committee of the council, or of any joint committee, joint board or other body to which functions of the council have been delegated or transferred, counts as attendance at a meeting of the council (e). Neither does the councillor vacate his seat if the failure was due to some reason approved by the county council, e.g. illness. Apparently the approval of a reason for absence may be given where the county council are considering whether the seat should be by them declared vacant under sect. 64 of the Act, and after the period of six months' absence is complete.

No doubt, the period of six months would commence to run from the first meeting which the councillor failed to attend, not the last meeting at which he was present. As the vacation of seats by reason of absence from meetings is a new provision in relation to county councillors, proviso (c) to sect. 68 (1) requires the period of six months' absence to be a period commencing on or after June 1, 1934. [375]

**Disqualifications.**—The disqualifications for office as a county councillor are contained in sect. 59 of the L.G.A., 1933, and a person so disqualified cannot be elected to, or remain a member of, a county council.

(s) L.G.A., 1933, s. 68; 26 Statutes 343.

(t) The members taking the declaration need not themselves have made a declaration of acceptance of office.

(u) See the County and Borough Election Forms Regulations, 1934; S.R. & O., 1934, No. 544.

(w) A justice or magistrate appointed for any place in H.M. Dominions may take the declaration.

(a) L.G.A., 1933, s. 61; 26 Statutes 337. See the definition of "consular officer" in s. 305; 26 Statutes 465.

(b) *Ibid.*, s. 62.

(d) *R. v. Sunderland Corp.*, [1911] 2 K.B. 458; 33 Digest 61, 373.

(e) L.G.A., 1933, s. 63; 26 Statutes 338. See *ibid.*, proviso (b), for protection for members of the army, navy and air force and other Government employees absent owing to their duties in war or emergency.

(c) *Ibid.*, s. 286.

The disqualifications are : (1) The holding of a paid office or other place of profit (except the office of chairman or sheriff) in the gift or disposal of the county council, or of a committee of that council (*f*). (2) Adjudication as a bankrupt or the making of a composition or arrangement with creditors (*g*). This disqualification ceases in the case of a bankrupt, (i.) on the date of annulment, if the bankruptcy is annulled either on the ground that the person should not have been adjudged bankrupt or that the debts have been paid in full, (ii.) on the date of discharge, if the bankrupt is discharged with a certificate that the bankruptcy was caused by misfortune without any misconduct. In any other case disqualification ceases five years from the date of discharge (*h*). In the case of a composition or arrangement with creditors, disqualification ceases on the date on which the debts are paid in full, or at the expiration of five years from the date on which the terms of the deed of composition are fulfilled. (3) The receipt of poor relief (*i*) within twelve months before the day of election, or after election ; but medical or surgical relief, or relief which could have been granted under the Blind Persons Act, 1920, does not disqualify (*k*). (4) A surcharge exceeding £500 by a district auditor within five years before the day of election or after election (*l*). As to the date on which a surcharge is deemed to be made, see L.G.A., 1933, sect. 59 (1), proviso (v.) (*m*). (5) Conviction within five years before the day of election or after election, in the United Kingdom (*n*), the Channel Islands or the Isle of Man of an offence, and sentence of imprisonment for not less than three months without the option of a fine. As to the date on which a conviction is deemed to take place, see L.G.A., 1933, sect. 59 (1), proviso (v.) (*o*). (6) Any person disqualified under an enactment relating to corrupt or illegal practices. (7) A paid officer engaged in the administration of the poor law, or a person who, having been such an officer, has been dismissed from his office, within five years before the day of election, under any enactment relating to the relief of the poor (*p*).

A county coroner, or his deputy, is disqualified from membership of the county council for the county in which he acts (*q*).

Teachers employed in non-provided schools are in the same position as regards membership of the county council as teachers employed in provided schools, that is to say they are disqualified (*r*).

(*f*) As to county returning officers, see *ibid.*, s. 59 (1), proviso (i.) ; 26 Statutes 335.

(*g*) *Semblé*, this means a composition with creditors in general.

(*h*) L.G.A., 1933, s. 59 (1) ; 26 Statutes 334.

(*i*) Relief by way of loan disqualifies (*Chard v. Bush*, [1923] 2 K. B. 849 ; 33 Digest 9, 9) ; relief given to a wife or child is deemed to be granted to the husband or parent (Poor Law Act, 1930, s. 18).

(*k*) L.G.A., 1933, s. 59 (1), proviso (iv.) ; 26 Statutes 335.

(*l*) It appears that the surcharge may be in respect of the accounts of any local authority. (*m*) 26 Statutes 335.

(*n*) Great Britain and Northern Ireland ; see the Royal and Parliamentary Titles Act, 1927, s. 2 (2) ; 3 Statutes 191.

(*o*) 26 Statutes 335.

(*p*) Employment under any poor law authority disqualifies from membership of any county council. As to paid officers of local authorities employed under the direction of a committee to which a county council or other local authority nominates members, see L.G.A., 1933, s. 59 (2) ; 26 Statutes 336.

(*q*) *Ibid.*, s. 59 (4) ; 26 Statutes 336.

(*r*) *Ibid.*, s. 59 (5). A teacher in a school or college aided, provided or maintained by the county council, as L.E.A., is disqualified as a county councillor if he is appointed by the county council, or by a committee thereof, but may be a member of the education committee of the council (*vide* proviso to L.G.A., 1933, s. 94).

Sect. 84 of the L.G.A., 1933 (*s*), empowers any local government elector for the administrative county to take proceedings in the High Court, or in a court of summary jurisdiction, against any person acting as a county councillor when disqualified, or when he has ceased to be a county councillor by failure to make or deliver his declaration of acceptance of office, or by resignation, or by failure to attend meetings. The High Court (but not a court of summary jurisdiction) may make an order declaring the office of the county councillor to be vacant.

Except where an order has been made by the High Court, the county council are required by sect. 64 of the Act to declare vacant the seat of a county councillor who has ceased to be qualified or become disqualified (except by reason of a surcharge, conviction or breach of the law as to corrupt or illegal practices), or has ceased to be a county councillor by reason of a failure to attend meetings. As to the dates on which casual vacancies arise, see sect. 65 of the Act.

A county councillor may be disabled from voting on a particular question. The proviso to L.G.A., 1933, sect. 75, precludes a county councillor for an electoral division consisting wholly of a county district (*t*), or of some part thereof, from voting on a matter involving only expenditure in respect of which that county district is not chargeable for the time being (*u*). [376]

**Interest in Contracts, etc.**—Sect. 76 (1) of the Act (*a*) precludes a county councillor from taking part in the consideration or discussion of, and from voting on any contract or proposed contract, or other matter (*b*) in which he has any direct or indirect pecuniary interest, and requires him, if he is present at the meeting at which the matter is dealt with, as soon as practicable after the meeting has commenced, to disclose his interest. It would seem that the extent of the interest need not be disclosed, but only the existence of an interest. By the proviso to sect. 76 (1) this requirement does not apply to a councillor's interest in a contract or other matter merely as a ratepayer or inhabitant, or as an ordinary consumer of gas, water or electricity, or as to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

The policy laid down by sect. 76 of the Act is that a councillor should not take part in the consideration of or vote upon any contract or other matter in which he has a direct or indirect pecuniary interest, but no disqualification for election as a county councillor or being a councillor now results from the existence of an interest in a contract with the council.

An indirect pecuniary interest in a contract or other matter arises if the county councillor, or his nominee, is a member of a company (*c*)

(*s*) 26 Statutes 350.

(*t*) This means a non-county borough, urban district or rural district; see s. 305.

(*u*) Cf. s. 9 of the Education Act, 1921; 7 Statutes 135, which precludes county councillors for an electoral division consisting of a borough or urban district which is autonomous for elementary education from voting on matters relating only to elementary education.

(*a*) 26 Statutes 346.

(*b*) As to the meaning of "other matter" reference may be made to *R. v. Hendon R.D.C., Ex parte Chorley*, [1933] 2 K. B. 696; Digest (Supp.) (interest in development of building site pending approval of a town planning scheme).

(*c*) The members of a company are the subscribers to the memorandum of association, and every other person who agrees to become a member, and whose name is entered in the register of members (Companies Act, 1929, s. 25; 2 Statutes 788). As to the register of members, see *ibid.*, ss. 95—107. A debenture holder is not necessarily a member of a company.

or other body with which the contract is made, or is proposed, or which has a direct pecuniary interest in any other matter, but a member of a company or body is not treated as interested, by reason only of such membership, if he has no beneficial interest in any shares or stock in the company or body (sect. 76 (2)). An indirect pecuniary interest also arises if the councillor is the partner of, or is employed by, a person (d) who is the contractor or proposed contractor, or who has a direct pecuniary interest in the other matter. Membership of, or employment under, any public body (e) is, however, excluded.

In the case of married persons living together, the interest of the husband or wife of a county councillor, if known to the other spouse, is deemed to be also an interest of that other spouse (sect. 76 (3) (f)).

A general notice in writing as to membership of or employment by a specified company or other body, or as to partnership with or employment by a specified person, given to the clerk of the county council, is a sufficient disclosure of interest in a contract or other matter relating to that company, body or person (sect. 76 (4)). These notices and other disclosures of interest are to be recorded in a book kept by the clerk of the county council which will be open to the inspection of members of the council (sect. 76 (5)).

A county councillor who fails to comply with the provisions of sect. 76 (1) is liable on summary conviction to a fine not exceeding £50; the onus of proving that he did not know that the contract or other matter in question was under consideration at the meeting is on the defendant, and if he establishes this defence he is entitled to be discharged (sect. 76 (6)). A prosecution may not be instituted except by or on behalf of the Director of Public Prosecutions (sect. 76 (7)).

The Minister of Health may remove any disability under sect. 76, if the number of members unable to vote at any one time would be so great as to impede business or if it appears to the Minister to be in the interests of the inhabitants of the county that the disability should be removed (sect. 76 (8)). The Minister has no power to grant a general dispensation under this provision (g).

Standing orders made by the county council may provide for the exclusion of a county councillor from any meeting at which a matter in which he has an interest is under consideration (sect. 76 (9)).

The disability imposed by sect. 76 applies to members of committees, sub-committees and joint committees, subject to certain adaptations (h). [377]

**Rights, Duties and Privileges.**—A county councillor has no precedence as such. He is entitled to attend meetings of the council, except when excluded by standing orders made under sect. 76 (9) or para. (4) of Part V. of the Third Schedule to the L.G.A., 1933, and to receive summonses to meetings. He may join with other members in requiring that a meeting of the council be convened, or in convening a meeting (*vide, ante*, p. 171). He does not appear to be entitled to

(d) "Person" includes a "company" (Interpretation Act, 1889, s. 19; 18 Statutes 1001). The provisions of L.G.A., 1933, produce disability for voting in circumstances similar to those in *Lapish v. Braithwaite*, [1926] A. C. 275; 38 Digest 67, 405, where it was held that the position of a salaried managing director of a company did not involve disqualification under the repealed s. 12 of Municipal Corps. Act, 1882.

(e) For definition of "public body," see L.G.A., 1933, s. 305; 26 Statutes 467.

(f) 26 Statutes 347.

(g) See Municipal Review, Oct. 1934, p. 2.

(h) S. 95; 26 Statutes 357.

attend a meeting of a committee or sub-committee of which he is not a member, but may attend by leave of the committee or sub-committee.

Subject to standing orders and to disability on account of pecuniary interest, a county councillor may speak, ask questions, or move or second resolutions or amendments at any meeting of the council at which he is lawfully present; in the absence of standing orders, the participation of a county councillor in the proceedings of a council is subject to the rulings of the chairman (*i*).

A county councillor's right of voting is subject to the disabilities contained in L.G.A., 1933, sects. 75, 76 (*ante*, pp. 182, 183).

The inspection of minutes, reports and other documents of the council is usually governed by standing orders and subject thereto a county councillor appears to have a common law right to inspect minutes of the council (*j*).

A county councillor, as such, has no statutory right of inspection of the minutes, reports and other like documents of the council and of its committees, but if he is a local government elector for the administrative county, he is entitled, on payment of a fee not exceeding one shilling, to inspect the minutes of the county council and take copies of, or extracts therefrom (*k*). As a local government elector, he is also entitled to inspect and copy any order for the payment of money made by the county council, and to inspect and copy the abstract of accounts of the county council and of the county treasurer and any report thereon of the district auditor; copies of the abstract and report are to be delivered to local government electors on payment of a reasonable sum for each copy (*l*).

A county councillor, as such, is entitled to inspect, and take copies of, or extracts from, the accounts of the council and of the county treasurer (*m*).

A county councillor, whether a local government elector or not, is entitled as a person interested to inspect the accounts and other documents deposited for inspection for seven clear days before their audit by the district auditor (*n*).

A county councillor who is entitled to make an inspection as a person interested may inspect by an agent (*o*); it is probable that this

(*i*) *Semble*, a county councillor who persistently refuses to comply with standing orders, or with the proper directions of the chairman, may be removed from the council chamber without unnecessary violence.

(*j*) As to whether a county councillor has a common law right to inspect documents addressed to or by the council of which he is a member, see observations of Lord READING, L.C.J., in *R. v. Hampstead Borough Council* (1917), 116 L.T. 213; 81 J.P. 65; 13 Digest 302, 341, where a *mandamus* was refused on the ground that the inspection was not primarily for the purpose of enabling the applicant to carry out his duties as a member of the council, but to assist a party to litigation in which the council was involved. See also *R. v. Godstone R.D.C.*, [1911] 2 K.B. 465; 75 J.P. 413; 33 Digest 101, 633 (inspection of cases and opinions of counsel refused). A right to inspect the minutes of the county council does not include the right to inspect minutes of committees, except so far as such minutes have been laid before the council for approval; see *Williams v. Manchester Corp.* (1897), 45 W.R. 412; 33 Digest 55, 336. Where reports of committees or epitomes of minutes are submitted to the council, inspection does not extend to the actual minutes of committees on which the reports or epitomes are based.

(*k*) L.G.A., 1933, s. 283 (1); 26 Statutes 455.

(*l*) *Ibid.*, s. 283 (2), (4).

(*m*) *Ibid.*, s. 283 (3).

(*n*) *Ibid.*, s. 224.

(*o*) *R. v. Bedewellty U.D.C., Ex parte Price* (1933), 98 J.P. 25; Digest (Supp.).

privilege also extends to inspection by a local government elector (*p*), but it is doubtful whether a county councillor, who may be presumed to be able to understand the documents and accounts without skilled assistance, is entitled to inspection by an agent when inspecting accounts under sect. 283 (3) of the L.G.A., 1933, or when exercising a common law right of inspection.

A county councillor is entitled to inspect the book in which the clerk of the county council records disclosures of interest by members (*q*). [378]

A county council may defray under sect. 294 of the L.G.A., 1933, the travelling expenses necessarily incurred by members of the council or of a committee, in travelling to or from meetings of the council or of any committee, sub-committee or joint committee, appointed for the discharge of functions throughout the whole area for which the council is charged with those functions (*r*). Payment of travelling expenses may also be made in respect of a necessary inspection undertaken by direction of the council or of a committee (*s*). The reasonable expenses of a county councillor in attending a meeting or conference convened by one or more local authorities, or by an association of local authorities, may be paid by the county council, and the Minister of Health may prescribe the cases in which, and the conditions under which, such payments may be made (*t*). The payment of the expenses of a county councillor attending a meeting or conference convened by a body which is not within the scope of sect. 267, may be sanctioned by the Minister of Health under the proviso to sect. 228 (1) of the Act, and cannot then be disallowed by the district auditor; in practice, the body convening the conference usually obtains an intimation in advance from the M. of H. that the reasonable expenses of delegates will be sanctioned. See also sect. 126 of the Education Act, 1921 (*u*), and the Board of Education Regulations made thereunder, as to the expenses of persons attending education meetings or conferences (*a*).

A county councillor may be authorised by resolution of the council to institute or defend proceedings on behalf of the council in any court of summary jurisdiction, or to appear in and conduct on behalf of the council any such proceedings although he is not a certificated solicitor (*b*).

A county councillor holding office at the commencement of L.G.A., 1933 (June 1, 1934), is deemed to have been elected under the Act of 1933, but retires on the date upon which he would have retired if the Act had not been passed, and is not disqualified from holding office

(*p*) *Vide* observations of CHARLES, J., in the *Bedwelly Case* (*ante*, p. 184, note (*o*)), at p. 31, as to the impossibility of fulfilling the purposes of P.H.A., 1875, s. 247, without the aid of a skilled person.

(*q*) L.G.A., 1933, s. 76 (5); 26 Statutes 347.

(*r*) Members of a guardians committee acting for part only of the administrative county cannot be paid travelling expenses. The term "travelling expenses" includes charges for locomotion only, and allowances cannot be made for subsistence, or for loss of time. Members should be required to certify that the expenses claimed were necessarily incurred.

(*s*) L.G.A., 1933, s. 294; 26 Statutes 462.

(*t*) *Ibid.*, s. 267. See the Local Government (Conferences) Regulations, 1934; S.R. & O., 1934, No. 690. (*u*) 7 Statutes 197.

(*a*) S. 114 (conference expenses) of the Poor Law Act, 1930; 12 Statutes 1030; is repealed by L.G.A., 1933, Sched. XI, and expenses of county councillors in attending poor law conferences are therefore payable under the provisions noted *supra*. For travelling expenses in connection with the County Councils Association, see title COUNTY COUNCILS ASSOCIATION, *post*, p. 186.

(*b*) L.G.A., 1933, s. 277; 26 Statutes 452.

owing to anything which took place before June 1, 1934, and which would not have given rise to disqualification if the Act had not been passed (c). [379]

**London.**—See title LONDON COUNTY COUNCIL.

The existing enactments governing qualification and disqualification of members of the L.C.C. were not repealed by the L.G.A., 1933, as to London (d). But the law in London as to acceptance of office by county councillors, mode of resignation, qualification for re-election, and vacature of office by reason of absence from meetings, has been assimilated to the new provisions in sects. 58 and 61 to 63 of the L.G.A., 1933 (e), by sects. 31 to 33 and 35 of the L.C.C. (General Powers) Act, 1934 (f). Sect. 31 (5) of the Act also provides that a person shall not be validly nominated for election as a county councillor unless his written consent has been obtained (g). Sect. 36 of the Act of 1934 also allows proceedings to be taken against a county councillor who is disqualified (h). The number of county councillors in London is now 124, being twice the number of M.P.s for London (i). [380]

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(c) L.G.A., 1933, s. 300; 26 Statutes 464. Note, however, that s. 300 does not relieve existing county councillors from disability for voting through an interest in a contract under L.G.A., 1933, ss. 75, 76.

(d) For those prescribing qualifications, see s. 11 of the Municipal Corporations Act, 1882 (10 Statutes 579), as applied by L.G.A., 1888, ss. 2, 75 (10 Statutes 686, 146), County and Borough Councils (Qualification) Act, 1914 (10 Statutes 852) and Representation of the People Act, 1918, s. 10 (7 Statutes 555). The enactments as to disqualification are contained in Municipal Corporations Act, 1882, ss. 12, 39 (10 Statutes 580, 590), also applied by L.G.A., 1888, and in the Bankruptcy Act, 1890, s. 9 (1 Statutes 586), L.G.A., 1929, s. 10 (10 Statutes 890), Audit (Local Authorities) Act, 1927, s. 1 (10 Statutes 879), Poor Law Act, 1927, s. 8 (12 Statutes 958), County Councils (Elections) Act, 1891, s. 6 (7 Statutes 542), Corrupt and Illegal Practices Prevention Act, 1883 (7 Statutes 465), Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (7 Statutes 511) (the last Act as applied by L.G.A., 1888, s. 75 (10 Statutes 746).

(e) See *ante*, pp. 178, 180.

(f) 24 & 25 Geo. 5, c. xl.

(g) This follows para. 3 of Part I. of the 2nd Sched. to the L.G.A., 1933; 26 Statutes 475.

(h) Corresponding to L.G.A., 1933, s. 84; see *ante*, p. 182.

(i) See para. 5 of the 6th Sched. to the Representation of the People Act, 1918; 7 Statutes 588.

## COUNTY COUNCILS ASSOCIATION

This body is an association of the county councils of England and Wales (a), formed for the purposes set out in Rule II. of the Association, namely, "by complete organisation, more effectually to watch over and protect the interests, rights and privileges of county councils, as representatives of the county ratepayers, as they may be affected by legislation, public or private, of general application to counties; to obtain and disseminate information on matters of importance to county councils generally, and in other respects to take such action as may be desirable in relation to any subjects in which county councils generally may be interested." A county council, being a member of the association, may send not more than four representatives to attend and vote at meetings of the association or of the executive committee;

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(a) The offices of the association are at 84, Eccleston Square, London, S.W.1.

the clerk of the county council, or the deputy clerk, may attend such meetings and may speak, but not vote (b).

The work of the association is conducted by an executive council, and by a number of committees, whose terms of reference entrust to them the consideration of the matters falling under the principal heads of county administration; the more important committees are the education committee, the parliamentary and general purposes committee, the police committee, the public health and housing committee, the agricultural committee, the highways committee, the public assistance committee, and the finance committee.

By a resolution of the executive council (c) representatives of certain societies of county officers (other than clerks and education secretaries) nominate representatives to attend meetings of committees, where their advice is desired, and representatives are nominated accordingly by the Association of County Medical Officers of Health, the County Accountants' Society, the County Surveyors' Society, the Incorporated Society of Inspectors of Weights and Measures, the County Chief Constables' Association and the County Valuers' Association. Provision is made by the rules for the attendance of clerks of county councils, education secretaries and of officers nominated by agricultural committees; the public assistance committee includes three public assistance officers as advisory members. Other officers may be called into consultation at the discretion of the association.

The association is the channel through which the collective opinion of county councils is presented to the central government, either in response to a request from a Government department, or spontaneously on the appearance of proposals for legislation or administrative action affecting county councils, or when in the opinion of the association attention should be drawn to some matter of common interest. The association prepares and submits evidence to Royal Commissions and departmental committees, and in less formal ways brings before members of both Houses of Parliament, Ministers and departmental officials the views of county councils on matters concerning these bodies, particularly those involving legislative or administrative action. Also, the discussion at meetings of the association, of the executive council and in the committees, and the recommendations resulting therefrom, assist in bringing about uniformity of administration, and the interchange of information. The representative character of the association has been recognised by Parliament in that it is empowered to recommend persons as members of bodies on which it is desirable to have representation of county councils (d).

The expenses of the association (which include the maintenance of offices and staff) are met from subscriptions paid by the constituent county councils, based on the population of each county. The County Councils Association Expenses Acts, 1890 to 1920 (e), enable a county council to subscribe annually a sum not exceeding £42 (f) to the funds of the association. The same statutes also enable a county council to pay the reasonable expenses of the attendance of repre-

(b) Provisions as to voting are contained in the rules of the association.

(c) Resolution of Parliamentary Committee adopted by Executive Council in July, 1913.

(d) E.g. Railways (Valuation for Rating) Act, 1930, s. 2 (2); 23 Statutes 456.

(e) 10 Statutes 772, 859.

(f) The County Councils Association Expenses (Amendment) Act, 1920, increased the limit of the annual subscription from £31 10s. to £42.

sentatives (not exceeding four in number) at meetings of the association (g).

Expenses under the foregoing statutes are payable as expenses for general county purposes.

The expenses of the association in relation to education and educational administration are paid under sect. 126 of the Education Act, 1921 (h). This section also authorises the payment of the expenses of persons nominated by the local education authority to attend meetings of the association, or of its committees, at which educational matters are dealt with. The payments made under sect. 126 are subject to regulations made by the Board of Education. [381]

**London.**—The L.C.C. is not a member of the County Councils Association. [382]

(g) This power is not affected by L.G.A., 1933, s. 267; 26 Statutes 448.

(h) 7 Statutes 197.

## COUNTY COURTS

*See OFFICIAL BUILDINGS.*

## COUNTY DISTRICTS

*See also title:* AREAS OF LOCAL GOVERNMENT, and titles listed in Vol. I., pp. 428, 429.

The not very illuminating expression "county district" was invented by draftsmen of Acts of Parliament to cover the non-county boroughs, urban districts and rural districts in England and Wales, and thus to avoid the necessity of a separate reference to each of these three classes of area. It is so used in the L.G.A., 1933, as by sect. 305 of that Act (a), the term "county district" is defined as meaning a non-county borough, urban district or rural district. Where the expression is used in any statute passed prior to the commencement of L.G.A., 1933 (b), it includes every urban and rural district, whether a borough or not, unless the context otherwise requires (c). But as sect. 21 of the L.G.A., 1894, was included in Part II. of that Act, and by sect. 35 of the Act, Part II. was not to apply to a county borough, save as specially provided, and sect. 21 contains no such special provision, it is generally considered that a county borough is not a "county district" within the definition in that section.

A county district is a constituent part of an administrative county, and each county district consists of one or more parishes. Subject

(a) 26 Statutes 466.

(b) June 1, 1934.

(c) L.G.A., 1894, s. 21 (3); 10 Statutes 792, as modified by L.G.A., 1933, Sched. XI., Part IV.; 26 Statutes 528.

to any alteration of boundaries, or the constitution of new authorities, taking effect after the passing (*d*) of the L.G.A., 1933, the county districts of England and Wales are (1) the non-county boroughs named in Sched. I., Part III. to L.G.A., 1933 (*e*), and (2) the urban districts other than boroughs and the rural districts existing at the passing (*d*) of the L.G.A., 1933; the foregoing classification excludes London (*f*). A county borough forms a separate administrative area, and is not a county district for the purposes of local government (*ff*).

The organisation of England and Wales into county districts is based on the administrative arrangements under the P.H.A., 1875. Part II. of that statute divided England and Wales into urban sanitary districts, and rural sanitary districts; the then boroughs, the districts of improvement commissioners under local Acts and the districts of local boards became urban sanitary districts, and the remainder of the country was organised in rural sanitary districts, each consisting of a poor law union, less any urban sanitary district within it. The L.G.A., 1894, sect. 21, converted improvement commissioners and local boards into U.D.C.s. and their districts into urban districts. Similarly, rural sanitary districts were turned into rural districts and rural sanitary authorities into R.D.C.s. The councils of boroughs (*g*) and of urban and rural districts are now described in the L.G.A., 1933, sects. 17, 31, 32 (*h*). [383]

One of the changes made by the L.G.A., 1933, is that the term "urban district" should cease to be used as appropriate to a borough, and should be restricted to urban districts not being boroughs, that is to say to districts under the government of an U.D.C. (*i*). In this title the term should be read as bearing this meaning.

As to alterations in county districts, see titles ALTERATION OF AREAS, CHARTERS OF INCORPORATION, and COUNTY REVIEW.

Natural or artificial accretions from the sea form part of the adjoining county district (*k*). Where a watercourse forming a boundary line between two or more county districts is altered, under powers conferred by the Land Drainage Act, 1930, so as to affect its character as a boundary line, the drainage authority or other persons responsible for the alteration are to send notice thereof to the Minister of Health who may either order the adoption of a new boundary line, or require the drainage authority to set out a boundary on the line of the old watercourse (*l*).

The name of an urban or rural district may be changed by the district council, with the consent of the county council (*m*), but this procedure does not extend to a non-county borough, as the councils concerned could not properly be allowed to amend the charter of incorporation.

(*d*) November 17, 1933.      (*e*) 26 Statutes 471.      (*f*) L.G.A., 1933, s. 1.

(*ff*) In *Kirkdale Burial Board v. Liverpool Corp.*, [1904] 1 Ch. 829; 33 Digest 55, 337, it was held that a county borough was an urban district within the meaning of s. 62 of the L.G.A., 1894.

(*g*) The statutory council of a borough is distinct from the municipal corpn., which consists of the body corporate constituted by the incorporation of the mayor, aldermen and burgesses of a borough, or of the mayor (or lord mayor), aldermen and citizens of a city; see L.G.A., 1933, ss. 17, 305; 26 Statutes 313, 466. There is no such incorporation of the inhabitants of an urban or rural district.

(*h*) 26 Statutes 313, 320.

(*i*) S. 1 (2) (d) of the Act; 26 Statutes 306.

(*k*) L.G.A., 1933, s. 144; 26 Statutes 383.

(*l*) *Ibid.*, s. 145; *ibid.* This provision replaces Land Drainage Act, 1930, s. 69; 23 Statutes 575, repealed by L.G.A., 1933.

(*m*) L.G.A., 1933, s. 147; 26 Statutes 385.

A county district is :

- (1) The area of the local sanitary authority under the P.H. Acts ;
- (2) a rating area, for which the rating authority act (*n*) ;
- (3) the area, or a constituent part of the area, of an assessment committee (*o*) ;
- (4) the area, or a constituent part of the area, of a guardians committee (*p*).

As to the extent to which a county council exercises administrative or supervisory functions in county districts of the several classes, and as to the incidence of county expenses, reference should be made to the several titles dealing with separate branches of local government.

**[384]**

**London.**—The expression “ county district ” does not apply to the administrative County of London. Otherwise the metropolitan borough councils fulfil the attributes of rating, assessment and local sanitary authorities. **[385]**

(*n*) R. & V.A., 1925, ss. 1, 68 ; 14 Statutes 617, 686.

(*o*) *Ibid.*, s. 16 ; *ibid.*, 640.

(*p*) Poor Law Act, 1930, s. 5 (1) ; 12 Statutes 971.

## COUNTY ELECTORAL DIVISIONS

*See also title : ELECTIONS.*

The representation of an electoral division on a county council differs from that of a ward on the council of a borough or urban district in that no electoral division of a county can be represented by more than one county councillor. Owing to the large acreage of many of the counties, it was necessary to adopt this system for the purpose of keeping the number of county councillors within manageable limits.

By sect. 2 (3) of the L.G.A., 1888 (*a*), provision was made for the division of each administrative county into electoral divisions ; any municipal borough, which returned one county councillor only, became a separate electoral division, whilst if a borough returned more than one county councillor, the borough council determined the boundaries of the electoral divisions, which were to be equal in number to the number of county councillors allotted to the borough by the Local Government Board. Elsewhere in the county, the first electoral divisions were determined by the justices in quarter sessions, and again were to be equal in number to the total number of county councillors allotted by the Local Government Board to that part of the county not forming part of any borough. Sect. 51 of the Act of 1888 (*b*) laid down the principles to be followed in forming electoral divisions, and sect. 54 of the Act (*c*) provided for the alteration of the boundary of any electoral division, or of the number of county councillors and electoral divisions by an order of the Local Government Board made on

the representation of a county council or borough council. In 1919, the Local Government Board were replaced by the Minister of Health, and in 1921 his powers under sect. 54 of the Act of 1888, with respect to electoral divisions and the number of county councillors, were transferred, by Order in Council (*d*), to the Secretary of State. [386]

The provisions of the L.G.A., 1888, as to electoral divisions are repealed, and, so far as necessary, re-enacted in the L.G.A., 1933. By sect. 10 of that statute (*e*), every county is to be divided into electoral divisions, each returning one county councillor, and a separate election is to be held for each division (*f*). Sect. 11 of the L.G.A., 1933 (*g*), provides the machinery for altering electoral divisions, and sets out the principles to be observed in forming new electoral divisions. A county council may at any time make a representation to the Home Secretary for the alteration of :

- (a) the boundaries of any county electoral division ; or
- (b) the alteration of the number of county councillors and of the number of electoral divisions in the county.

The representation may be made either on the receipt by the county council of proposals from the council of a borough or district, or without such proposals (*ibid.*, sect. 11 (1)). If the county council refuse or neglect to make a representation on the receipt of proposals from a borough or district council, that council may make a representation to the Home Secretary (*ibid.*, sect. 11 (2)). A copy must be sent to the county council (*ibid.*, sect. 11 (3)).

Copies of representations relating only to the boundaries of electoral divisions are to be sent to the councils of the boroughs or districts wholly or partly comprised in the divisions proposed to be altered ; copies of representations relating to the number of county councillors, and the number of electoral divisions, must be sent to the council of every borough or district wholly or partly comprised in the county (*ibid.*, sect. 11 (3)). Notice of the representation must be advertised, and the advertisement must state that a copy of the representation is open to inspection at a specified place within the county, and that petitions with respect to the representation may be presented to the Home Secretary within six weeks after the publication of the notice (*ibid.*, sect. 11 (4)).

The Home Secretary must then direct a local inquiry to be held, unless :

- (a) for special reasons he considers that the representation ought not to be entertained ; or
- (b) within six weeks after the publication of the notice, no petition against the representation has been received from any local authority (*h*) in or for the county, or from at least one hundred

(*d*) M. of H. (Registration and Elections, Transfer of Powers) Order, 1921; S.R. & C., 1921, No. 959.

(*e*) 26 Statutes 310.

(*f*) The electoral divisions in existence at the commencement of L.G.A., 1933, continue until altered under s. 11 of that Act, or under L.G.A., 1929, s. 50 ; 10 Statutes 919. See L.G.A., 1933, s. 307 (1) (iv.) (26 Statutes 469) and Interpretation Act, 1889, s. 38.

(*g*) *Ibid.*, 310.

(*h*) "Local authority" means a county council, borough council, district council or parish council (L.G.A., 1933, s. 305 ; 26 Statutes, 466). A petition may be presented by a local authority other than those to whom copies of the representation must be sent under s. 11 (3), or by the electors of an electoral division other than that proposed to be altered.

or one-sixth of the local government electors for any county electoral division of the county, whichever number is the smaller; or

- (c) all petitions so received have been withdrawn.

After holding an inquiry (if necessary), the Home Secretary may either make such order as he thinks fit, or refuse to make an order (*ibid.*, sect. 11 (5)). [387]

By sect. 11 (6) of the L.G.A., 1933 (*i*), so far as is reasonably practicable, the following directions are to be observed in the constitution of electoral divisions :

- (A.) The population of the divisions should be approximately equal, due regard being had (1) to area ; (2) to a proper representation both of the urban and of the rural population ; (3) to the distribution and pursuits of the population ; (4) to the latest census ; and (5) to any considerable change of population since the latest census.
- (B.) Every division must consist of one or more boroughs or districts, or wards, or shall be comprised in one borough, district or ward.
- (C.) If a rural district is divided into two or more electoral divisions each division must consist of one or more parishes.

On an alteration of the boundaries of a county, borough, district or parish, under Part VI. of the L.G.A., 1933, the order effecting the alteration may, as respects any area affected by it, contain incidental, consequential, or supplemental provisions for the division or redivision of the area into electoral divisions, the constitution of new electoral divisions and the alteration of electoral divisions, and as to the number and distribution of county councillors (*k*). These powers can also be exercised on the occasions of the second general review and subsequent periodical reviews of county districts provided for by sect. 146 of the L.G.A., 1933 (*l*).

The alteration of county electoral divisions by orders under sect. 46 of the L.G.A., 1929 (*m*), carrying into effect the first general review of county districts, is subject to somewhat different provisions because sect. 66 (2) of that Act (*n*) applies the general provisions as to orders in sect. 59 of the L.G.A., 1888 (*o*), to any order made under Part IV. of the Act of 1929. In addition, it was considered that the first general review was likely to be of so extensive a character as to make necessary a reorganisation of the electoral divisions. Sect. 50 of the L.G.A., 1929 (*p*), therefore required a county council, after the completion of the first general review of county districts, to review the electoral divisions, and submit a report to the Home Secretary, accompanied by proposals as to any alterations which the county council considered desirable (*q*). Any such proposals were to have effect as if they had been a representation made to the Home Secretary under sect. 54 of the L.G.A., 1888 (*r*), for an alteration by order of the electoral divisions. If the

(*i*) 26 Statutes 311.

(*k*) L.G.A., 1933, s. 149 (2) ; *ibid.*, 388.

(*l*) *Ibid.*, 384.

(*m*) 10 Statutes 916.

(*n*) *Ibid.*, 927.

(*o*) *Ibid.*, 734.

(*p*) *Ibid.*, 919.

(*q*) The report was to be submitted to the Home Secretary before January 1, 1933, or such later date as the Home Secretary might allow ; s. 50 is not repealed by the L.G.A., 1933, but appears to be spent as regards any county when the report has been submitted and any order thereon has been made.

(*r*) 10 Statutes 730 (repealed). See now L.G.A., 1933, s. 11 ; 26 Statutes 310.

Home Secretary considered that a general review of the electoral divisions of a particular county was unnecessary, he could give a direction under the proviso to sect. 50 (1) of the L.G.A., 1929 (*s*), that the section should not apply to the county. Sub-sect. (2) of sect. 50 prescribes the procedure to be followed if a county council fail to submit a proposal for an alteration of electoral divisions for which a *prima facie* case exists.

Under sect. 13 of the L.G.A., 1933 (*t*), a county council may divide an electoral division into polling districts, and may alter any polling district. [388]

**London.**—The provisions of the L.G.A., 1933, above referred to do not apply to the administrative County of London, which is still governed, as regards electoral divisions, by sect. 40 (4) of the L.G.A., 1888 (*u*), as amended by para. 5 of the 6th Schedule to the Representation of the People Act, 1918 (*a*). The effect of the amendment is that each division of a parliamentary borough, or, if undivided, the borough, for the time being, is an electoral division for the election of county councillors. See also title LONDON COUNTY COUNCIL. [389]

(*s*) 10 Statutes 920.  
(*u*) 10 Statutes 119.

(*t*) 26 Statutes 312.  
(*a*) 7 Statutes 588.

## COUNTY ENGINEER

*See COUNTY SURVEYOR.*

## COUNTY HALL

*See OFFICIAL BUILDINGS.*

## COUNTY JUSTICES

*See JUSTICES OF THE PEACE.*

## COUNTY LIBRARIAN

*See LIBRARIAN.*

## COUNTY MEDICAL OFFICER OF HEALTH

*See MEDICAL OFFICER OF HEALTH.*

## COUNTY OF A CITY OR TOWN

|                         | PAGE  |         | PAGE      |
|-------------------------|-------|---------|-----------|
| HISTORICAL INTRODUCTION | - 194 | SHERIFF | - - - - - |
| PRESENT POSITION        | - 196 | LONDON  | - 197     |

*See also titles :*

CHARTERS OF INCORPORATION ;  
 CITY OF LONDON ;  
 COMMON LAW CORPORATIONS ;  
 COUNTY BOROUGH ;  
 COUNTY BOROUGH, CREATION OR  
 ALTERATION OF ;

CREATION OF CITIES ;  
 MUNICIPAL CORPORATION ;  
 ROYAL BOROUGHS ;  
 SHERIFFS.

**Historical Introduction.**—Certain towns in England and Wales have the privilege of being counties of cities or counties of towns, and are cut off for most purposes from the county or counties surrounding them. The City of London is the most notable example of a county of a city. This special position arose either from a charter or a grant by letters patent of the Sovereign in ancient times.

A county of a city or town is not necessarily a county borough. When county boroughs were created by the L.G.A., 1888, the fact that Canterbury was a county of a city no doubt was a factor in arriving at the decision that, notwithstanding its small population and rateable value, it should be constituted a county borough. But a comparison of the list of counties of cities and of towns (*a*) with the list of county boroughs appearing in Part II. of the First Schedule to the L.G.A., 1933 (*b*), shows that the boroughs of Berwick-upon-Tweed, Lichfield, Poole, Haverfordwest and Carmarthen, although counties of themselves, are not county boroughs. In these instances, if the population of the borough at the census of 1881 was 10,000 or upwards, certain powers of the borough council were excluded by sect. 35 of the Act of 1888 (*c*) from transfer to the county council, and the borough was to be exempt from contributing to the costs of quarter sessions, but was to be deemed to form part of the county which it adjoined, or, if it adjoined more than one county, of the county of which it formed part for parliamentary elections (*sub-sect. (8)*). If the population of the borough was less than 10,000 at the census of 1881, the duty of maintaining a separate police force and certain other duties passed to the county council under sects. 38 and 39 of the Act (*d*), and *sub-sect. (8)* of sect. 38 provided that, apart from purposes of quarter sessions and justices, the borough should be deemed to form part of the county of which it formed part for parliamentary elections. [390]

As will be seen from the title CREATION OF CITIES, there has been much controversy as to the difference between a city and a borough. Blackstone, writing in 1768 (Vol. I., 4th ed., 88), quotes Coke upon Littleton (p. 109), as saying that “a city is a town incorporated which is or has been the see of a bishop,” but in a note to this he adds “there

(*a*) See *post*, p. 195.  
 (*c*) 10 Statutes 713.

(*b*) 26 Statutes 471.  
 (*d*) *Ibid.*, 716, 717.

is no necessary connection between a see and a city, and indeed places in which no episcopal jurisdiction ever existed are called cities in Domesday. There are also counties corporate, which are certain cities and towns, some with more, some with less territory annexed to them, to which, out of special grace and favour, the Kings of England have granted the privilege to be counties of themselves and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates so that no officers of the county at large have any power to intermeddle therein."

In a "Treatise of Cities and Burghs or Boroughs" by Brady, printed in 1704, in which the charters of several towns are set out, the author points out that "we may note from both these last towns (*i.e.* Gloucester and Leicester) that there was not then (*i.e.* in the time of Edward III. when the towns received their charters) much difference between a city and a borough, both appellations being given to one and the same town; Leicester never had bishops, and at that time Gloucester had none, the great distinction grew after cities were made counties by charter."

Quite apart from a charter of incorporation, it appears that the Crown granted the privilege of separation from the county at large to a few boroughs as well as to cities. Some idea of what such a separation involved may be seen from the *Gloucester Case* (*dd*), where, in 1593, a decision was given as to whether an assize judge could sit in that city. It was said in the judgment, "King Richard III. by his letters patent granted the burgesses of Gloucester and to their successors, that the town of Gloucester shall be a county of itself, several and distinct from the county of Gloucester for ever, and no part of that county; and shall be called the county of the town of Gloucester."

The modes of electing a sheriff, before the operation of the Municipal Corpsns. Act, 1835, were apparently as various and complicated as those of electing the mayor and council. In section 61 of that Act, a list is given of the towns known to be counties, and they are empowered to appoint a fit person to execute the office of sheriff. They were Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester and York as counties of cities, and Carmarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole and Southampton as counties of towns. The burgh and town of Berwick-upon-Tweed was later declared by the Berwick-upon-Tweed Act, 1836 (*e*), to be a county of itself to all intents and purposes except only for the return of members of Parliament. For all other administrative purposes, these towns are included among the municipal boroughs mentioned in the Schedule to the Municipal Corpsns. Act, 1835.

In the House of Commons Return issued by the Local Government Board on July 31, 1888, these names are slightly different, *i.e.* Coventry is not included at all, Newcastle-upon-Tyne is given as a county of a city, not of a town, and Berwick-upon-Tweed is included as a county of a town.

Nor is Coventry mentioned in the list of counties of cities and towns appearing in the Second Schedule to the Territorial and Reserve Forces Act, 1907 (*f*). In that list, Newcastle-upon-Tyne is given as a county of a town, not a county of a city.

Haverfordwest was declared to be a county separate from the

(*dd*) Poph. 16; 33 Digest 286, 19.

(*e*) 10 Statutes 541.

(*f*) 17 Statutes 299. See *post*, p. 196.

county of Pembroke by 34 & 35 Hen. 8, c. 26, sect. 61 (g), and is blessed with the additional complication that the county of the town is more extensive than the municipal borough, and that a separate Lord Lieutenant may be appointed for the county of the town. [391]

**Present Position.**—For the purposes of local government, as distinguished from the administration of justice, counties of cities and counties of towns are governed by the Municipal Corporations Act, 1882, and the L.G.A., 1933, and are subject to the same provisions as other cities and boroughs, for by sect. 6 of the Act of 1882 (h), the Act is to apply to every city and town to which the Municipal Corporations Act, 1885, applied. By sect. 7 of the Act of 1882, "county" does not include a county of a city or a county of a town, and these towns are therefore definitely classed as municipal boroughs and not as counties. The same definition was included in sect. 100 of the L.G.A., 1888 (i). By sect. 4 of the Interpretation Act, 1889 (k), however, the expression "county," when used in any Act passed after the year 1850 and before January 1, 1890, includes a county of a city and a county of a town, unless the contrary intention appeared (l). The contrary intention has appeared in the Acts of 1882 and 1888 already mentioned, and also in the Sheriffs Act, 1887, where by sect. 38 (m) "county" means a county at large, and does not include a county of a city or county of a town.

By the Counties of Cities Acts, 1798 and 1811 (n), provision was made enabling actions, indictments and other proceedings, the causes of which arose within the counties of cities and towns corporate, and any writ of *mandamus* to be removed for trial to the county next adjoining the city or town, and any punishment inflicted on conviction to be inflicted in the county of the city or town, notwithstanding the removal of the place of trial. Sect. 1 of the Act of 1798 was repealed as to actions by the Civil Procedure Acts Repeal Act, 1879 (o).

The City of London, Westminster and Southwark were excluded from the Counties of Cities Act, 1798, by sect. 10 of that Act (p). [392]

Under sect. 75 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925 (q), a court of assize may be held in any building, whether in or belonging to the county, city, town, borough or other area of jurisdiction, for which the court is held, and in sect. 225 of the Act (r) "county" is defined to include a county of a city or county of a town.

Whenever the courts of assize for any county at large are held in or near any city or town which is a county of itself at the same time with the like courts for the city or town, the judges' lodgings are to be deemed, by sect. 8 of the County Buildings Act, 1826 (s), to be situate both within the county at large and the county of the city or town.

In the definition of "county" contained in sect. 38 of the Territorial and Reserve Forces Act, 1907 (t), it is provided that each county of a

(g) 3 Statutes 109.

(h) 10 Statutes 577.

(i) *Ibid.*, 760.

(k) 18 Statutes 993.

(l) It will be seen that the unusual course was adopted of excluding this definition from application to Acts passed after 1889.

(m) 17 Statutes 1123.

(n) 4 Statutes 397, 426. See also ss. 19, 23, 24 of the Criminal Justice Administration Act, 1851; 4 Statutes, 527, 528; and s. 188 of the Municipal Corporations Act, 1882; 10 Statutes 636.

(o) 18 Statutes 206.

(p) 4 Statutes 401.

(q) *Ibid.*, 168.

(r) *Ibid.*, 199.

(s) 10 Statutes 539. This Act is repealed by the L.G.A., 1933, except so far as it relates to assize courts, sessions houses and judges' lodgings.

(t) 17 Statutes 296.

city or county of a town mentioned in column 1 of the Second Schedule to the Act (*u*), shall be deemed to form part of the county set opposite in column 2 of the Schedule. This of course means for the purposes only of the Act of 1907.

On the other hand, by sect. 88 of the Salmon and Freshwater Fisheries Act, 1923 (*v*), certain sections of that Act apply to a borough being a county of a city or of a town and containing a population of 10,000 or upwards at the census of 1881, as if the borough were a separate county, and as if the council of the borough were substituted for the county council.

A special definition of "borough" as including boroughs which are counties of cities or of towns is added to the definition of "county" in sect. 110 of the Licensing (Consolidation) Act, 1910 (*a*), with the result that such of them as are not county boroughs are to be deemed to form part of the county for the purpose of the powers and duties of quarter sessions as compensation authority, and for other specified purposes of the Act, they will form part of the county, whether the borough is or is not a county borough.

Another reference to counties of cities and of towns occurs in sect. 28 of the Representation of the People Act, 1918 (*b*). Where a parliamentary borough is coterminous with or wholly contained in a county of a city or of a town having a sheriff, the sheriff (in the case of the City of London the sheriffs) will be the returning officer at any parliamentary election, while, if the parliamentary borough is coterminous with or wholly contained in a borough not satisfying the description already given, the returning officer is the mayor.

Nearly all the counties of cities and of towns named on p. 195, *ante*, are either parliamentary boroughs or form a part of such a borough, but Canterbury, Chester, Lichfield, Poole, Carmarthen and Haverfordwest are assigned by the Act of 1918 to a division of a parliamentary county, or to an undivided parliamentary county.

Whenever a county of a city or of a town is extended by a local Act or order, it is the practice to include the added area within the county, as well as in the city or borough, and to provide that the powers of the sheriff, the justices in quarter sessions, the recorder and the clerk of the peace, shall apply to the added area. In preparing the map of the city or borough as extended, care should be taken to guard against any implication that any shire hall of the county at large which may locally be situate within the city or borough, has been included within the limits of the extended city or borough by the local Act or order. [393]

**Sheriff.**—As to the appointment of sheriffs generally, see title SHERIFFS. Their appointment in counties of cities and counties of towns is regulated by sect. 170 of the Municipal Corporations Act, 1882 (*c*), which enacts that the council of every borough being a county of itself, and of the City of Oxford, shall on November 9 of every year appoint a fit person to execute the office of sheriff, who shall have the same duties and powers as the sheriff, or the person filling the office of sheriff, in the respective borough or city, would have had if the Act had not been passed. This section is not repealed by the L.G.A., 1933, and sheriffs are referred to in that Act in sect. 22 (*d*), where, as regards aldermen, it is enacted that they shall be elected every third year, at

(*u*) 17 Statutes 299.  
(*a*) 9 Statutes 1043.  
(*c*) 10 Statutes 632.

(*v*) 8 Statutes 831.  
(*b*) 7 Statutes 564.  
(*d*) 26 Statutes 316.

the annual meeting of the council, immediately after the election of the mayor, or, if there is a sheriff, the election of the sheriff. Under sect. 59 (1) (a) a sheriff is excepted from the general disqualification for office as a member of a local authority which applies to persons holding a paid office in the gift of the authority. The duties of the sheriff are further contained in the Sheriffs Act, 1887, which by sect. 36 (e) enacted that the sheriff for a county of a city or a county of a town should be appointed in the manner laid down in the Municipal Corps. Act, 1882, as already mentioned. Any such sheriff must have sufficient property, whether of land or of personality, to answer the Sovereign and his people, though by sect. 4 (f), the sheriff for a county at large must have sufficient land alone. Every such sheriff for a county of a city or town is to perform the same duties as before, at the customary fees and remuneration. The rest of the Act of 1887 applies in the same way as to the sheriff of a county, and any jurisdiction in the Act vested in the justices in general or quarter sessions may be exercised, so far as regards constables, by the council of the borough, and, so far as regards other matters, by the recorder (sect. 36 (4)). [394]

**London.**—The City of London is a separate county for the purpose of the jurisdiction of justices and quarter sessions, and for certain other non-administrative purposes. Two sheriffs of the City are elected annually by the Court of Common Hall. See, further, title CITY OF LONDON. [395]

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(e) 17 Statutes 1122.

(f) *Ibid.*, 1107.

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## COUNTY OF A TOWN

*See COUNTY OF A CITY OR TOWN.*

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## COUNTY OFFICES

*See OFFICIAL BUILDINGS.*

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## COUNTY OF LONDON

*See LONDON; LONDON COUNTY COUNCIL.*

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# COUNTY POLICE

| PAGE  | PAGE |  |     |
|---|------|--|-----|
| INTRODUCTORY - - - - -                        | 199  | DUTIES OTHER THAN ORDINARY                             |     |
| THE POLICE AUTHORITY - - - - -                | 200  | POLICE DUTIES - - - - -                                | 208 |
| CONSTITUTION OF COUNTY POLICE FORCE - - - - - | 201  | CONSOLIDATION OF COUNTY AND BOROUGH FORCES, AND MUTUAL |     |
| PROMOTION, DISCIPLINE AND DISMISSAL - - - - - | 202  | AID - - - - -  | 209 |
| PAY AND ALLOWANCES - - - - -                  | 204  | SPECIAL CONSTABLES - - - - -                           | 211 |
| POLICE FEDERATION - - - - -                   | 205  | PARISH CONSTABLES - - - - -                            | 211 |
| STATUS OF COUNTY POLICE - - - - -             | 206  | FINANCE - - - - -                                      | 212 |
|   |      | LONDON - - - - -                                       | 213 |

*See also titles :*

BOROUGH POLICE ;  
CHIEF CONSTABLE ;  
METROPOLITAN POLICE ;  
POLICE ;

POLICE PENSIONS ;  
SPECIAL CONSTABLES ;  
STANDING JOINT COMMITTEES.

**Introductory.**—The principal statutes affecting the constitution and maintenance of county police forces are : the County Police Acts, 1839 and 1840 ; the County and Borough Police Act, 1856 ; the County Police Act, 1857 ; the County and Borough Police Act, 1859 ; the Police Act, 1890 ; the Police (Weekly Rest-Day) Act, 1910 ; the Police Act, 1919 ; the County and Borough Police Act, 1919 ; the Police Pensions Acts, 1921 and 1926 ; and the Police (Appeals) Act, 1927 (*a*).

Before the operation of the L.G.A., 1888, the administration of police matters in counties was entrusted to the county justices in general or quarter sessions, but by sect. 9 (1) of that Act (*b*), the powers, duties and liabilities of the justices vested in the quarter sessions and the county council jointly, and are discharged through the standing joint committee of the quarter sessions and county council established under sect. 30 of that Act. In this title, the term "police authority" is generally used to denote the standing joint committee.

The establishment of a regularly constituted county police force was first authorised by the County Police Act, 1839, but the constitution of a force for each county did not become obligatory until after December 1, 1856 (*c*). By sect. 3 of the County Police Act, 1839 (*d*), the Home Secretary was required to make rules for the government, pay, clothing, accoutrements and necessities of the county police, these rules being subject to variation on the representations of the police authority so as to meet the special circumstances of any county. The Home Secretary's powers are now amplified by sect. 4 of the Police Act, 1919 (*e*), which empowers the Home Secretary to make regulations as to the government, mutual aid, pay, allowances, pensions, clothing,

(*a*) All these statutes will be found in 12 Statutes 775 *et seq.*

(*b*) 10 Statutes 692.

(*c*) County and Borough Police Act, 1856, s. 1 ; 12 Statutes 812.

(*d*) *Ibid.*, 776.

(*e*) *Ibid.*, 868.

expenses and conditions of service of the members of all police forces in England and Wales (f). Every police authority must comply with these regulations. A draft of any such regulations is to be submitted to the police council, which includes representatives of the police federation and members appointed by the Home Secretary after consultation with the County Councils and Municipal Corps. Associations. The Home Secretary must consider any representations made by the council.

For police purposes "county" means a county, riding, or division having a separate court of quarter sessions of the peace, or in which separate county rates are made; liberties and franchises, other than incorporated boroughs, are included in the relative counties (County Police Act, 1839, sects. 27 and 28, and County and Borough Police Act, 1856, sect. 30) (g).

Sect. 24 of the County Police Act, 1839 (h), precluded the county police authority from appointing constables in boroughs, but a borough force may be consolidated with a county force by agreement under sect. 14 of the County Police Act, 1840 (i), and, on the application of a borough, the Home Secretary may order consolidation (k). By the operation of sect. 39 of the L.G.A., 1888 (l), the councils and watch committees of all boroughs, with a population of less than 10,000 according to the census of 1881, ceased to be police authorities, and the borough forces were merged in the county forces. [396]

#### The Police Authority.—See title STANDING JOINT COMMITTEES.

The standing joint committee, as police authority, exercises the following functions in relation to the county police:

(1) The appointment and dismissal of the chief constable (m) (see title CHIEF CONSTABLE); the person appointed must be a fit person "duly qualified according to the rules" of the Home Secretary, and the appointment is subject to the Home Secretary's approval. As to qualifications, including previous police experience, see Regs. 7, 8 and 9 of consolidated edition of Police Regulations.

A police authority appears still to be empowered to appoint two chief constables for any county which has been divided for the purposes of Parliamentary representation (County Police Act, 1839, sect. 4 (proviso)). A police authority may appoint a person under sect. 2 of the County Police Act, 1857 (n), to be chief constable of a county, although he may hold, or be appointed to, the office or offices of chief constable of an adjoining county or counties; but the consent of the police authority for each county concerned is necessary.

(2) The approval of the appointment of deputy chief constable (o).

(f) Regulations have been made as follows: S.R. & O., 1920, No. 1484, as amended by 1922, No. 250; 1923, No. 327; 1924, No. 291; 1925, Nos. 319 and 618; 1926, No. 1581; 1930, No. 614; 1931, No. 842; 1932, Nos. 762 and 888; 1933, Nos. 326 and 722; 1934, Nos. 660 and 661. A consolidated edition is published by H.M.S.O.

(g) 12 Statutes 781, 817. For the establishment of a separate force for (a) the Soke of Peterborough, see County and Borough Police Act, 1856, s. 30; and (b) the Isle of Ely, see County Police Act, 1840, s. 34; *ibid.*, 796.

(h) 12 Statutes 780.

(i) *Ibid.*, 790.

(k) County and Borough Police Act, 1856, s. 5; *ibid.*, 813.

(l) 10 Statutes 717.

(m) County Police Act, 1839, s. 4; 12 Statutes 776. On an appeal by a chief constable under the Police (Appeals) Act, 1927 (*infra*), the police authority is the respondent (*ibid.*, s. 1 and Schedule; 12 Statutes 898, 900).

(n) 12 Statutes 818.

(o) County Police Act, 1839, s. 7; *ibid.*, 777.

(3) The variation of the number of constables appointed for the county and the fixing of the numbers of superintendents, inspectors, sergeants, and other subordinate officers, subject in either case to the approval of the Home Secretary (County Police Acts, 1839, sect. 2; 1840, sect. 26 (*p*), and Regs. 5 and 6 of consolidated edition of Police Regulations).

(4) The provision of pay, allowances, clothing, housing accommodation and medical and dental attendance in accordance with the Police Regulations, and also pensions (*q*).

(5) The provision of station-houses, and cells for the temporary confinement of persons taken into custody (*r*), subject to the approval of plans by the Home Secretary.

(6) The division of the county into police districts, subject to the approval of the Home Secretary, with a fixed number of constables appointed to each district (*s*). If this is done, police expenditure is classed under the heads of general expenditure and local expenditure, the former being defrayed in common by all districts, and the latter being defrayed by the police districts separately (*t*). Division into police districts may be made compulsory by Order in Council, made on the petition of persons contributing to the rate for police of the county (*u*), but it is believed that this power has not been exercised. Constables may be required to act in any part of the county, notwithstanding a division into police districts (County Police Act, 1840, sect. 28, proviso).

(7) The giving of directions to police officers as to the performance of duties connected with the police (*a*), in addition to their ordinary duties (*b*). Under sect. 9 (2) of the L.G.A., 1888 (*c*), this power is also exercisable by the justices in quarter sessions, and by the county council. In practice, directions are not given by the quarter sessions or by the county council, except in matters of urgency, without consultation with the standing joint committee and with the chief constable.

(8) The power of giving directions under sect. 9 of the Sheriffs Act, 1887 (*d*), as to the employment of police officers to keep order in and within the precincts of a court of assize (*e*). **[397]**

**Constitution of County Police Force.**—The strength and establishment of a county police force is determined by the police authority,

(*p*) 12 Statutes 776, 794.

(*q*) As to pensions, see Police Pensions Acts, 1921 and 1926, and title **POLICE PENSIONS**.

(*r*) County Police Act, 1840, s. 12; 12 Statutes 790. As to provision of police stations jointly, see the Lock-up Houses Act, 1848; 13 Statutes 302; and the Petty Sessions and Lock-up House Act, 1868; 11 Statutes 313. As to joint committees for the purposes of the Act of 1868, see L.G.A., 1888, s. 81; 10 Statutes 752.

(*s*) County Police Act, 1840, s. 27; 12 Statutes 794.

(*t*) *Ibid.*, s. 28. As to expenses for special county purposes, see L.G.A., 1933, ss. 180 and 181; 26 Statutes 404.

(*u*) County and Borough Police Act, 1856, s. 4; 12 Statutes 813.

(*a*) See "Duties other than Ordinary Police Duties," *post*, p. 208.

(*b*) County and Borough Police Act, 1856, s. 7; 12 Statutes 814.

(*c*) 10 Statutes 692.

(*d*) 17 Statutes 1109.

(*e*) This function was transferred to the standing joint committee by L.G.A., 1888, s. 9. The chief constable must comply with the directions given, but if no direction is given, the sheriff must, under s. 9 of the Sheriffs Act, 1887, provide uniformed men-servants to keep order and protect the judge.

and normally the ranks permitted are designated (1) chief constable ; (2) superintendent ; (3) inspector ; (4) sergeant ; and (5) constable.

Where varying degrees of responsibility render intermediate ranks necessary, the inclusion of all or any of the following ranks may be approved by the Home Secretary, viz. assistant chief constable, chief superintendent, chief inspector, sub-divisional inspector, sub-inspector, station sergeant and acting-sergeant (Regs. 1 and 2 of consolidated edition of Police Regulations).

The chief constable is appointed by the police authority (*vide ante*, p. 200), but the appointment and dismissal of all other officers of the county force is entrusted to the chief constable, subject to the approval of two justices to the first appointment of individual constables (*f*). Where the police establishments of a county and of a borough are consolidated into one police establishment, unless provision for appointment by the chief constable of the county is made in the consolidation agreement, on the chief constable dismissing a borough constable the watch committee are forthwith to appoint another constable in his stead (*g*). A superintendent is to be appointed to be at the head of the constables in each division of the county (*h*), and, subject to the approval of the police authority, the chief constable must appoint one of the superintendents to be deputy chief constable (*i*). The deputy chief constable has all the powers, privileges and duties of the chief constable in the event of the latter being necessarily absent from the county, incapable owing to illness, or vacating his office by death or otherwise, but on a vacancy in the office of chief constable the deputy is only empowered to act for three calendar months from the date of the vacancy (*ibid.*).

With the approval of the police authority, the chief constable may appoint additional constables, on the application and at the cost of persons who show the need for the appointments (*k*). Additional constables are subject to the orders of the chief constable, and have all the powers, privileges and duties of other county constables, but must be discontinued on one calendar month's notice given by the person on whose application the appointment was made (*ibid.*). As to special constables and parish constables, see *post*, p. 211.

Police officers of a county force may be detailed for special duties within the organisation of the force ; generally a senior officer acts as chief clerk at headquarters, and an inspector or a sergeant is responsible for the clerical work at each divisional headquarters. A detective section is formed in the larger county forces, and in some cases women police are employed (*l*). Where the services of policewomen are not available, arrangements must be made for police matrons and female searchers to be available when necessary (*m*). [398]

**Promotion, Discipline and Dismissal.**—The appointment of superintendents, and promotion of officers from constable up to the rank

(*f*) County Police Act, 1839, s. 6 ; 12 Statutes 777.

(*g*) County Police Act, 1840, s. 15 ; *ibid.*, 791.

(*h*) I.e. police divisions formed for administrative purposes, and often comprising one or more petty sessional divisions ; cf. *ibid.*, s. 27 ; *ibid.*, 794.

(*i*) County Police Act, 1839, s. 7 ; *ibid.*, 777.

(*k*) County Police Act, 1840, s. 19 ; *ibid.*, 791.

(*l*) As to police women, see the Police (Women) Regulations of 1933 (S.R. & O., 1933, No. 722).

(*m*) In country districts, these duties are often undertaken by the wives of married officers.

of inspector is in the hands of the chief constable, whose powers are regulated by Regs. 27 to 32 of the consolidated edition of the Police Regulations. Promotion up to the rank of inspector is subject to qualifying examinations in police duties and educational subjects, but otherwise is by selection (Reg. 27). Candidates for promotion must have served for specified periods in the ranks from which they would be promoted, unless the chief constable is satisfied that they possess special qualifications for the duties on which they are to be employed, and must have satisfactory records of conduct.

The consolidated Police Regulations embody a discipline code, and in every force a code of offences against discipline is to be published; the code must embody the provisions of the discipline code contained in the regulations, with such additions as the police authority may make with the approval of the Home Secretary; this approval is provisional only until the additions have been laid before the police council (*n*) (Reg. 12).

Provision is made for the reduction of charges to writing, for a personal hearing of the accused officer by the chief constable, and for the taking of evidence. An offence against discipline may be punished by (1) dismissal; (2) being required to resign forthwith, or at such date as may be ordered (as an alternative to dismissal); (3) reduction in rank; (4) reduction in rate of pay (*o*); (5) forfeiture of merit or good conduct badges (except such as have been granted for an act of courage or bravery); (6) fine (*p*); (7) reprimand; or (8) caution. Every punishment, except a caution, is to be entered on the officer's conduct sheet (Regs. 13 to 21).

The foregoing regulations as to discipline are made under sect. 4 of the Police Act, 1919 (*q*), but the statutory powers of a chief constable of a county under sect. 26 of the County and Borough Police Act, 1859 (*r*), remain, and he may therefore suspend any constable whom he thinks remiss or negligent in the discharge of his duty or otherwise unfit for the same, and impose a fine or reduce him in rank (*s*). Sect. 26 expressly provides that a fine and reduction in rank under that section is to be in addition to any other punishment to which the constable may be liable, and apparently allows a further punishment to be inflicted under the Police Regulations. An officer who commits a criminal offence, or an offence punishable summarily, may therefore be prosecuted to conviction, despite any disciplinary action taken by the chief constable.

Under sect. 6 of the County Police Act, 1839 (*t*), the chief constable may dismiss any constable at his pleasure, and it seems clear that a police officer is not entitled to notice before dismissal, and cannot sustain an action for wrongful dismissal against the chief constable or the standing joint committee.

Sect. 1 of the Police (Appeals) Act, 1927 (*u*), gives to a police officer

(*n*) As to the police council, see "Police Federation," *post*, p. 205.

(*o*) For a definite period not exceeding twelve months, where the officer is not also reduced in rank (Reg. 22).

(*p*) The amount of the fine is not to exceed one week's pay (Reg. 24), and see County and Borough Police Act, 1859, s. 26; 12 Statutes 822.

(*q*) 12 Statutes 868.

(*r*) *Ibid.*, 822.

(*s*) As to suspension, see *Walkwork v. Fielding*, [1922] 2 K. B. 66; 37 Digest 180, 24. As to suspension of an allowance in lieu of pay, see Reg. 51 (2).

(*t*) 12 Statutes 777.

(*u*) *Ibid.*, 898.

who is dismissed, or who is required to resign as an alternative to dismissal, a right of appeal to the Home Secretary, who may allow or dismiss the appeal, or vary the punishment by substituting some other punishment which the chief constable might have awarded. On an appeal by a member of a county force, the chief constable is the respondent (*a*), and the Home Secretary may, under sect. 5 of the Act (*b*), order the appellant to pay the whole or part of his own costs; otherwise all costs in relation to the appeal are paid out of the police fund (*c*). [399]

**Pay and Allowances.**—The pay of the chief constable is fixed by the police authority, subject to the approval of the Home Secretary, and the pay of all ranks of the police force is in accordance with the scale of pay of the force approved by the Home Secretary (Reg. 47 of the Consolidated Regulations). No pensionable payment may be made except in accordance with the scale. Rates of pay for constables and sergeants are set out in Reg. 48, and, substantially, the pay of police officers below the rank of chief constable is now on a uniform basis throughout England and Wales. Special advances in increments, and additional increments for long service and efficiency, may be awarded in accordance with Regs. 53 to 63.

Stoppages from pay on account of sickness or injury are governed by Reg. 89 (*d*). Stoppages are to be made if so directed by the police authority.

A police officer who resigns or withdraws from duty without proper leave or notice, is liable to forfeit any arrears of pay then due to him (*e*). He is liable also, on summary conviction, to a penalty not exceeding £5 (County and Borough Police Act, 1859, s. 4).

It appears that a police officer may sue the police authority for arrears of pay due to him, but it is doubtful whether this right of action depends on a contract of service; possibly such an action should be brought on a special footing, namely, on the duty of the police authority to pay such sum as is due by virtue of statutory obligation, plus a certain degree of contractual relationship (*f*).

Allowances to police officers are non-pensionable, and the amounts and conditions of payment of allowances are subject to the approval of the Home Secretary; no allowances may be paid except such as are prescribed in the consolidated Police Regulations, or in the approved scale of allowances for the force.

(1) *Rent Allowance* (Reg. 65).—Every police officer must be provided with a house or quarters free of rent and rates (*g*), or shall receive an allowance in lieu thereof; the allowance may be either at a flat rate, or may take the form of reimbursement to the officer of the rent and rates paid by him, subject to a maximum limit.

(2) *Uniform Allowance* (Reg. 66).—A police officer of or above the

(*a*) Except when the chief constable is the appellant, in which case the police authority is the respondent; see the schedule to the Act; 12 Statutes 900.

(*b*) 12 Statutes 899.

(*c*) As to procedure on appeals, see the Police (Appeals) Rules, 1927; S.R. & O., 1927, No. 680.

(*d*) The amount of stoppage is not limited in the case of sickness certified by a medical practitioner as being due to, or an injury suffered by reason of, the officer's own misconduct, neglect or default.

(*e*) County and Borough Police Act, 1859, s. 4, printed as amended by County and Borough Police Act, 1919, s. 1, at 12 Statutes 821.

(*f*) *Per McCARDIE, J.*, in *Fisher v. Oldham Corp.* (1930), 94 J. P. 132, at pp. 134—135.

(*g*) "Rates" include water charges on an assessment basis.

rank of inspector, who does duty in uniform but is not supplied with uniform, is entitled to an allowance for the provision and maintenance thereof.

(3) *Boot Allowance* (Reg. 67).—This is payable to an officer who is not supplied with boots.

(4) *Plain Clothes Allowance* (Reg. 68).—This is payable to an officer who is required to do duty in plain clothes for a period of one or more complete weeks, and is at the rates prescribed by the Regulation.

(5) *Detective Allowance* (Reg. 69).—This allowance, at the prescribed rates, is payable to an officer who performs detective duties continuously for a period of one or more complete weeks ; it is additional to plain clothes allowance.

(6) *Subsistence and Lodging Allowance, Refreshment Allowance and Detachment Duty Allowance* are payable in accordance with Regs. 70—72.

(7) *Extra Duty Allowance*.—A police officer may receive from an authority for whom extra duties are undertaken, an extra duty allowance, if the police authority are satisfied that the extra duty involves regularly, or on recurring occasions, a material addition to his normal hours of duty. The duties in respect of which this allowance may be received are (i.) duties as inspector under the Diseases of Animals Acts, 1894 to 1927 ; (ii.) inspection of weights and measures ; (iii.) inspection and sampling of food and drugs and fertilizers and feeding stuffs ; (iv.) inspection under the Shops Acts ; and (v.) duties on behalf of the local authority in respect of local taxation licences.

A police officer who acts as assistant relieving officer (*h*) may receive an annual allowance, in lieu of any other payments in respect of extended hours of duty, if the police authority are satisfied that this work causes a material addition to his normal work (Reg. 73).

(8) *Temporary Duty Allowance*.—This allowance is payable to a constable or sergeant who is required to perform the duties of a higher rank for a continuous period exceeding two weeks ; the allowance runs from the expiration of the first two weeks of special duty (Reg. 74).

A police officer employed at the expense of a private person is entitled to allowances as shown above, but not to any special allowance in consideration of the purpose for which he is employed (Reg. 76).

Regs. 78 to 86 provide for the issue to police officers of clothing, equipment and necessaries ; articles issued do not become the property of the officer, and must be handed in on the officer leaving the force.

A police officer is entitled to free medical attendance, and also to free dental treatment certified to be necessary for the officer's health and continued efficiency in the police service (Reg. 88).

As to pensions, see title POLICE PENSIONS.

Under the Police (Weekly Rest-Day) Act, 1910 (*i*), each officer not above the rank of inspector is to be allowed, subject to the exigencies of the service, fifty-two days off duty in each year, so arranged that, so far as possible, he gets one day's rest in every seven ; this off-duty time is additional to the annual leave to which a police officer is entitled under Regs. 41 to 43 of the consolidated Police Regulations. [400]

**Police Federation.**—A police officer is debarred from being a member of a trade union, or, subject to the provisions as to the Police Federa-

(*h*) Police officers are occasionally appointed as assistant relieving officers for the purpose of dealing with casualties.

(*i*) 12 Statutes 860.

tion, of any association having for an object the control or influence of the pay, pensions or conditions of service of any police force (*k*). In order to afford means whereby the members of the police service can consider, and bring to the notice of the Home Secretary, matters affecting the police, a statutory Police Federation has been formed, which is independent of any body or person outside the police service (*l*). Members of a county police force, below the rank of superintendent, form a branch of the Federation, and three branch boards are constituted in each county police force, namely, for constables, sergeants and inspectors respectively. Provision is also made, by para. 18 of the Schedule to the Act of 1919 (*m*), for the holding of police councils for consideration of general questions affecting the police; the Federation is represented on the police council through its joint central committee.

As to the offence of causing disaffection among police officers, see sect. 3 of the Police Act, 1919 (*n*). **[401]**

**Status of County Police.**—The chief constable and the other police officers, after being sworn in before a justice, exercise their powers, privileges and duties throughout the county, and also in detached parts of other counties, locally situate within the county for which the officers are appointed; they have all the functions, either common law or statutory, of any duly appointed constable (*o*). The execution of warrants of commitment to gaol by county police officers is regulated by sect. 33 of the County Police Act, 1840 (*p*), which provides for the handing over of the prisoner from officer to officer, subject to the endorsement of the warrant by the receiving officer; by this endorsement, the receiving officer secures the protection which applies to the officer to whom the warrant was directed originally.

By sect. 9 of the County Police Act, 1839 (*q*), a county police officer is prohibited from taking part in a parliamentary election for "the county in which he is so appointed or for any county adjoining thereto or for any city or borough within any of the said counties" (*r*). This disability continues for six calendar months after the officer's appointment ceases; the penalty for a breach of this prohibition is £20, but acts done by the officer in the discharge of his duty are excepted (*ibid.*). A similar prohibition against taking part in municipal elections for boroughs within the county is contained in sect. 3 of the County and Borough Police Act, 1859 (*s*), but the penalty is £10 only.

Despite the foregoing disqualifications, a county police officer, if on the register of voters, is entitled to vote at a parliamentary, or local government election (*t*). The Act of 1887 provides for the issue of a certificate by the chief constable to an officer whose duties on polling day are likely to prevent him from voting at his normal polling-station,

(*k*) Police Act, 1919, s. 2; 12 Statutes 867.

(*l*) *Ibid.*, s. 1 and Schedule; *ibid.*, 867, 870.

(*m*) *Ibid.*, 872.

(*n*) *Ibid.*, 868.

(*o*) County Police Act, 1839, s. 8; *ibid.*, 777.

(*p*) 12 Statutes 796.

(*q*) *Ibid.*, 778.

(*r*) This description of the constituency appears in the earlier part of the section which was repealed by the Police Disabilities Removal Act, 1887; 7 Statutes 540; but seems to be brought in by the words "any such county, city or borough" in the part of the section which is still in operation.

(*s*) 12 Statutes 820.

(*t*) Police Disabilities Removal Acts, 1887, s. 2, and 1893, s. 1; 7 Statutes 540, 543.

and on production of the certificate the presiding officer at any polling station for the constituency in which the officer is entitled to vote must allow the officer to vote, but must retain and cancel the certificate. The Act of 1893 extends the same privileges to police officers voting at local government elections.

By sect. 10 of the County Police Act, 1839 (*u*), a county police officer is exempt from jury service, but must not employ himself in any office or employment for hire or gain, other than in the execution of his police duties (*u*). This restriction is amplified by Reg. 8 of the consolidated Police Regulations, which prohibits a police officer from (1) residing without the consent of the chief constable at premises where his wife keeps a shop, (2) holding, or allowing his wife, or any member of his family living with him, to hold, a liquor or entertainment licence, and (3) allowing his wife to carry on, in the district for which the officer is appointed, a shop or any like business without the consent of the chief constable.

Apart from punishment under the Discipline Code of the force, a county police officer guilty of neglect or violation of duty is liable on summary conviction to a fine not exceeding £10, or to imprisonment not exceeding one calendar month (*a*).

A county police officer may not resign or withdraw from duty except with the written consent of the chief constable or superintendent, or after one calendar month's notice given by the officer to the chief constable or superintendent (*b*). For the penalty for withdrawing without consent or notice, see "Pay and Allowances," at *ante*, p. 204.

A county police officer who is dismissed, or ceases to hold and exercise his office, must hand in his clothing and accoutrements; failure to do so renders the officer liable, on summary conviction, to imprisonment not exceeding one calendar month, and a search warrant may be issued in respect of the missing articles (*c*).

A police officer is a public servant and an officer of the Crown; the ordinary relationship of master and servant does not exist as between the police authority and a police officer, and the police authority are not liable in damages for the wrongful or negligent exercise by a police officer of his statutory, or common law, powers and functions (*d*). But a police officer may be liable personally for his torts (*e*); a police officer who is sued in respect of an act or omission done in pursuance or execution, or intended execution, of his duty, is entitled to the protection afforded by the Public Authorities Protection Act, 1893 (*f*).

Although a police officer is not a servant of the police authority, the police authority appear to have a right of action against a person, by whose negligence or other tortious act the police authority is deprived of the services of the police officer; *semble*, a similar remedy is available to the police authority where the result of the negligence or other tort

(*u*) 12 Statutes 778.

(*a*) County Police Act, 1839, s. 12; *ibid.*, 778.

(*b*) *Ibid.*, s. 13, as amended by County and Borough Police Acts, 1859, s. 4, and 1919, s. 1; *ibid.*, 778, 821.

(*c*) County Police Act, 1839, s. 14; *ibid.*, 779. See also Reg. 83 of Police Regulations.

(*d*) *Fisher v. Oldham Corp.* (1930), 94 J. P. 132; Digest (Supp.); discussing *Stanbury v. Exeter Corp.* (1905), 70 J. P. 11; 38 Digest 52, 298; and *Bradford Corp. v. Webster*, [1920] 2 K. B. 135; 34 Digest 183, 1490.

(*e*) *Elias v. Fasmore* (1934), 98 J. P. 92, and leading article at 98 J. P. N., p. 67.

(*f*) 13 Statutes 455; and see also the Police (Property) Act, 1897; 12 Statutes 856.

is to increase the burden on the pension fund in respect of the injured officer (g). [402]

**Duties other than Ordinary Police Duties.**—For the authorities entitled to give directions to police officers as to the performance of duties connected with the police, see "The Police Authority," *ante*, at p. 201.

Certain special duties are also imposed on police officers by statute, those principally affecting county police officers being :

(1) *Sects. 103 and 120 of the Army Act* (h), which require a police constable, on the production of a route issued to a commanding officer, to billet officers, soldiers and horses on the occupiers of victualling houses in any place mentioned in the route; penalties may be imposed on constables for neglecting or refusing, after sufficient notice, to give billet, or for billeting on persons not liable, or for taking payment to excuse a person from liability (*ibid.*, sect. 109). No extra duty allowance is payable in respect of billeting. A yearly list of keepers of victualling houses, giving the situation of each house and the accommodation available is to be made out by the police authority under sect. 107 (i) of the Act. The provisions of s. 108 of the Act with respect to billeting must be followed and the regulations in the Second Schedule to the Act (k) must be observed by a constable.

(2) *Sects. 13 and 15 of the Lunacy Act*, 1890 (l), which require a constable who has knowledge that a person deemed to be of unsound mind is not under proper care and control, or is cruelly treated or neglected, or is wandering at large, to give information to a justice (m), and, if a reception order is made, any constable may be required by the justice to convey the person of unsound mind to the institution named in the order.

(3) *Sect. 43 of the Diseases of Animals Act*, 1894 (n), which requires the police force of each police area to execute and enforce the Acts and the orders of the Minister of Agriculture. As to the duties of police officers in relation to these matters, see title DISEASES OF ANIMALS.

As to additional duties in respect of which police officers may receive extra duty allowance, and as to acting as assistant relieving officers, see "Pay and Allowances," *ante*, p. 205.

The following duties may be undertaken by the police, by arrangement with the responsible authority, viz. the inspection of domestic servants' registries, common lodging-houses, hackney carriages, licensed boats, beach-trading, markets, fire appliances and street lamps (o).

(g) *Bradford Corpn. v. Webster*, [1920] 2 K. B. 135; 34 Digest 183, 1490. In *Fisher v. Oldham Corpn.* (1930), 94 J. P. 182; Digest (Supp.), McCARDIE, J., suggests that the claim in the *Bradford Case* rested on a special and highly artificial form of action, based on the old rule, that a master has some sort of property in a *quasi-servant*, and cited as an analogy the action by a father for seduction of his daughter. In *Bradford Corpn. v. Webster*, the question of the relationship of master and servant as applicable to a county or borough police officer was neither argued nor decided, but in view of the observations of McCARDIE, J., noted *supra*, the better opinion would appear to be that although the relationship of master and servant does not exist, an action for damages for loss of services of a police officer and in respect of additional pension is still maintainable.

(h) 17 Statutes 183, 196.

(i) *Ibid.*, 184.

(k) *Ibid.*, 245.

(l) 11 Statutes 23, 24.

(m) In cases under Lunacy Act, 1890, s. 13, the justice must be a judicial authority appointed under s. 10, *ibid.*

(n) 1 Statutes 412.

(o) For these duties, extra duty allowance is not payable; see Reg. 73, *ante*, p. 205.

A police officer is not to be required to collect or recover monies due under affiliation orders, or under maintenance orders under the Married Women (Maintenance) Acts, 1895 and 1920 (*p*), but a police officer may, with the consent of the police authority, be appointed collecting officer under the Affiliation Orders Act, 1914 (*q*), or under the Criminal Justice Administration Act, 1914 (*r*). Monies may also be collected by the police on warrants or on warrants for commitment. Also a police officer is not to be required to act as collector of market tolls, mayor's attendant or town crier, or on any other work not connected with police duty which, in the opinion of the Home Secretary, the police may not properly be required to perform (Reg. 73, *ante*, p. 205). [403]

A county police officer may be employed temporarily on special duty at the request of a private person or persons; the police authority pays the officer any sum due to him in respect of extended hours of duty, and recovers the amount so paid from the person or persons for whose benefit the officer was so employed (Reg. 76 of the Consolidated Regulations) (*rr*).

**Consolidation of County and Borough Forces and Mutual Aid.**—The consolidation of a borough police force with the police force for the surrounding or adjoining county may be effected under sect. 14 of the County Police Act, 1840 (*s*), by agreement between the borough council and the standing joint committee for the county, and in every such case all constables appointed either for the county or for the borough have all the powers, privileges and duties of county constables throughout the county and the borough. The agreement must be in writing under the common seal of the borough and should be executed on behalf of the standing joint committee as the police authority (*t*). The agreement is terminable, with the sanction of the Home Secretary, by six months' notice in writing on either side, and under the corporate seal if given by the borough, but the notice is only valid if the giving thereof is agreed upon by three-fourths of the borough council, or by three-fourths of the standing joint committee as the case may be (*u*).

Where a county and a borough police force are consolidated, the chief constable of the county has the general disposition and government of the consolidated force, and may dismiss any constable; but if he dismisses a borough constable he must report the fact, and the reasons for dismissal, to the mayor of the borough, and the watch committee under sect. 15 of the County Police Act, 1840 (*v*), then appoint another constable, unless the consolidation agreement provides that all appointments shall be made by the chief constable. The power of dismissal of constables vested in borough justices and in the watch committee for the borough, is therefore suspended whilst the consolidation agree-

(*p*) 9 Statutes 405, 413. See also Reg. 73, *ante*, p. 205.

(*q*) 2 Statutes 21.

(*r*) 11 Statutes 371.

(*rr*) See *Glamorgan Coal Co. v. Glamorgan Standing Joint Committee and Powell Duffryn Steam Coal Co. v. Glamorgan Standing Joint Committee*, [1916] 2 K. B. 206, C. A.; 37 Digest 191, 117. See also title POLICE.

(*s*) 12 Statutes 790.

(*t*) It is advisable that the agreement should also be signed by two or more justices of the county, and countersigned by the clerk of the peace (*cf.* County Police Act, 1840, s. 14), and sealed with the common seal of the county council as the authority responsible for raising the rate contribution to the expenses of the consolidated force.

(*u*) County Police Act, 1840; 12 Statutes 790; as amended by County and Borough Police Act, 1856, s. 20; *ibid.*, 816.

(*a*) 12 Statutes 791.

ment is in force; see sect. 191 (6) of the Municipal Corporations Act, 1882 (b), preserving the operation of the County Police Act, 1840.

If a borough council represents to the Home Secretary that application has been made to the appropriate standing joint committee for consolidation, and that consolidation has not been effected, the Home Secretary is authorised by sect. 5 of the County and Borough Police Act, 1856 (c), to inquire into, and report upon, the proposed terms of consolidation, and thereupon the terms and conditions, and date of consolidation may be fixed by Order in Council, and the terms may be varied, or consolidation may be terminated, by a similar order.

A consolidation agreement should provide for the following matters:

(1) the date on which it is to operate ("the appointed day") and the obligation on the county police authority to maintain an efficient police force in the borough;

(2) the consolidation of the two forces, and the transfer to the county force of the borough police officers and the ranks to be held by them on the appointed day (d). Any borough police officers retiring on the appointed day should be named in the agreement;

(3) future arrangements for the appointment of constables to act in the borough should be set out; usually the appointment of all constables is placed in the hands of the county chief constable;

(4) if so agreed, the county chief constable may be relieved of the duty of reporting to the mayor the dismissal of borough police officers; see the terms of sect. 15 of the County Police Act, 1840 (e);

(5) the application to the transferred borough police officers of the rules applicable to officers of the county police force;

(6) the assessment of the borough to the county police rate;

(7) financial adjustments in respect of:

(A) the cost of equipping transferred borough police officers with the uniform, equipment and accoutrements of county police officers;

(B) any stores, equipment or buildings taken over from the borough by the county; if the ownership of buildings used for police purposes is retained by the borough, the county police authority should be given a right of user on suitable terms as to payment of rent, and liability for repair; in such a case provision should be made for payment by the borough of a suitable proportion of the cost of permanent additions or improvements (f);

(C) the borough police fund (g) should be apportioned, with reference in particular to pensions already accrued or accruing on the appointed day, and so as to transfer to the county a sum representing rateable deductions made under the Police Pensions Acts, 1921 and 1926, in respect of police

(b) 10 Statutes 637.

(c) 12 Statutes 813.

(d) If the borough chief constable is to be transferred, and the office of county chief constable is not vacant, a suitable appointment must be found for the borough chief constable, unless he retires.

(e) 12 Statutes 791.

(f) This payment may take the form of a financial adjustment based on outstanding loans, and the then value of the additions or improvements on cessation of the use of the property for police purposes.

(g) For definition of "police fund," see Police Pensions Act, 1921, s. 30 and Third Schedule; 12 Statutes 888, 894. In the adjustment, account should be taken of any retained investments formerly standing to the credit of a pension fund (*vide ibid.*, s. 22 (2); *ibid.*, 884).

- officers for whom present or future liability is assumed by the county police authority, with interest thereon up to the appointed day ;
- (D) generally, an adjustment in respect of any property, debts or liabilities outstanding on the appointed day ;
  - (E) a further financial adjustment in the event of the termination of the consolidation agreement ;
  - (F) arbitration in case of dispute.

By sect. 25 of the Police Act, 1890 (*h*), provision is made for the temporary strengthening of a police force by the addition of officers from another police force ; the added officers are, subject to the agreement between the police authorities, deemed to be in the same position as constables of the aided force, notwithstanding that they have not been sworn in or taken a declaration as constables of the aided force. The agreement may be made for a particular occasion, or as a standing agreement, and with reference either to recurring or to unforeseen events, or otherwise. The powers of a police authority under this section may be delegated by them with or without restrictions to the chief constable. An agreement may contain terms as to the command of the added constables, and as to their pay, allowances, pensions, and gratuities, and otherwise, as may seem expedient. A police authority may make mutual aid agreements with more than one other police authority. Mutual aid is one of the matters as to which the Home Secretary may make regulations under sect. 4 of the Police Act, 1919 (*i*), and in practice mutual aid agreements are now in a common form prescribed by the H.O. But in an emergency, a chief constable may arrange to borrow constables from another police force, even if there has been no delegation to him of the powers of the police authority under sect. 25 of the Act of 1890 (*k*). [404]

**Special Constables.**—See title SPECIAL CONSTABLES.

Special constables may be appointed in counties under the powers conferred by the Special Constables Acts, 1831, 1835 and 1838 (*l*). A special constable may be appointed by two justices, and remains a special constable until his services are suspended or determined (*m*). The expenses of special constables fall on the county rate and normally are defrayed as part of the general police expenses ; these expenses are included in the police accounts for grant purposes. By the Special Constables Act, 1914 (*n*), which was originally a temporary war enactment, but was made permanent by the Special Constables Act, 1923 (*o*), the Home Secretary was empowered to make regulations as to the appointment and position of special constables ; this power has been exercised by the Special Constables Order, 1923 (*p*). [405]

**Parish Constables.**—The control of parish constables remains with quarter sessions for the county, the transfer of powers to the standing joint committee being in respect of county police only. Under sects. 1, 2 of the Parish Constables Act, 1872 (*q*), parish constables are not to be appointed except in pursuance of a resolution of quarter sessions to the effect that the appointment is necessary for the preservation of the peace or for the proper discharge of public business in the county. The

(*h*) 12 Statutes 850.

(*i*) *Ibid.*, 868.

K.B. 384; 37 Digest 191, 117.

(*l*) 12 Statutes 759 *et seq.*

(*m*) *Reg. v. Porter and Thomas* (1841), 9 C. & P. 778; 37 Digest 182, 58.

(*n*) 12 Statutes 862.

(*o*) *Ibid.*, 895.

(*p*) S.R. & O., 1923, No. 905.

(*q*) 12 Statutes 831.

appointment of parish constables has now been almost discontinued, except in certain counties where their continuance is justified by the performance of special duties, e.g. in connection with land drainage. A parish council, as successors to the vestry, may resolve under sect. 4 of the Act of 1872 (*r*), that a paid parish constable, or constables, should be appointed, and may fix the salary, and thereupon the justices for the petty sessional division in which the parish is situate make any appointment. A parish constable appointed under the Act of 1872, has, by virtue of sect. 10 of that Act (*s*), full power to execute any warrant or serve any summons anywhere in the county for which the justice issuing the same has jurisdiction, but cannot be compelled to execute process outside the parish for which he is appointed.

It would seem that the power to appoint a paid constable can only be exercised for a parish, if quarter sessions have resolved, under sect. 1 of the Act of 1872, that a parish constable for the parish is necessary, although this point is not entirely clear. [406]

**Finance.**—The cost of maintaining a county police force is borne primarily by the county fund (*t*), and except so far as miscellaneous receipts are available, the expenditure is met from rates and from the H.O. grant.

The county treasurer is required to keep a separate account of receipts and payments for police purposes (*u*) ; the justices in quarter sessions were required to levy a police rate (*a*), and this function was transferred to county councils by L.G.A., 1888, sect. 3 (i.). The police rate is raised as part of the county rate for general county purposes, or for special county purposes, as the case may be. Boroughs maintaining separate police forces, and portions of counties within the metropolitan police area, are not rateable for county police purposes (*a*). The machinery for the collection of the police rate was provided by the County Rates Act, 1844 (*b*), which was brought into general operation by sect. 4 of the High Constables Act, 1869 (*c*), and in effect is superseded by the R. & V.A., 1925.

Prior to the commencement of L.G.A., 1929, the grant in respect of police was made up as follows : (1) A transfer from the exchequer contribution account of a sum equal to one-half of the cost of the pay and clothing of the police during the preceding year ; (2) a grant in aid of the pension fund out of the local taxation account ; (3) a grant paid through the H.O. of such sum as was necessary to make up the above subsidies to one-half of the net total police expenditure in the relative financial year (*d*) ; this was known as the Supplementary Exchequer Grant.

L.G.A., 1929, sect. 85 (*e*), provided for the discontinuance and winding-up of the exchequer contribution account and local taxation account, and from April 1, 1930, the transfer and grant, under

(*r*) 12 Statutes 832.

(*s*) *Ibid.*, 833.

(*t*) For the county fund, see L.G.A., 1933, s. 181 ; 26 Statutes 405.

(*u*) County Police Act, 1839, s. 23, as amended by L.G.A., 1933, Sched. XI. ; 12 Statutes 780 ; 26 Statutes 521.

(*a*) County Police Act, 1840, s. 3 ; 12 Statutes 787 ; *ibid.*, ss. 6, 7, 8 and 9, provide for payment of contributions in respect of liberties, franchises and detached parts of counties, but these provisions are practically obsolete.

(*b*) 14 Statutes 505.

(*c*) 12 Statutes 830.

(*d*) County and Borough Police Act, 1856, s. 16, empowered the Treasury to pay grant in respect of police pay and clothing, subject to a certificate of efficiency ; this section is repealed by L.G.A., 1929, Sched. XII.

(*e*) 10 Statutes 937.

heads (1) and (2), *supra*, were merged in a H.O. grant of 50 per cent. of the total net approved expenditure on the police. This grant is administered in accordance with the rules made by the H.O. in 1919 for the administration of the Supplementary Exchequer Grant (*supra*), and provision of the necessary money is made annually by Parliament.

By Road Traffic Act, 1930, sect. 57 (4) (f), advances may be made out of the Road Fund towards expenses incurred by the police authority in providing and maintaining vehicles and equipment for use by the police force in connection with the enforcement of the Road Traffic Acts; the conditions under which these grants are made are contained in memoranda issued by the H.O.

For the purposes of the H.O. grant, a police authority is required to submit a preliminary estimate not later than October prior to the commencement of the financial year to which the estimate relates; a revised estimate is submitted in the course of the financial year; after the close of the financial year the net expenditure (including expenditure on police pensions) is certified by the district auditor, and a claim for grant is submitted in the form prescribed by the H.O. Grant may be withheld in whole or in part if the Home Secretary is not satisfied that the police force is efficiently or properly administered, or if approval of expenditure has not been obtained (g).

All receipts and payments for police purposes, including pensions, are made into or out of the county fund (h), except, as regards pensions, in the three divisions of Lincolnshire where a separate pension fund is maintained.

The main heads of income and expenditure of a county police authority are as follows :

(a) *Income.*

Government grants (H.O. and Road Traffic Act).

Deductions from pay (i).

Income from investments retained from the discontinued pension funds.

Fines and fees.

Payments by other authorities for services of police. Contributions for extra duties (e.g. transfers from the Diseases of Animals account, Weights and Measures account, etc.).

Deficit (borne by county rate).

(b) *Expenditure.*

Pay and allowances.

Clothing and accoutrements.

Travelling.

Pensions and gratuities.

Provision and repair of police stations and police houses.

Rents, rates and loan charges.

Motor patrols.

Expenses of prosecutions.

Administration. [407]

**London.—See title METROPOLITAN POLICE.**

(f) 23 Statutes 653.

(g) In cases of expenditure on police housing, etc., the H.O. will approve schemes in principle, and will authorise the purchase of sites, subject to the report of the district valuer without requiring the submission of details as each step is taken.

(h) L.G.A., 1933, s. 181; 26 Statutes 405.

(i) See title POLICE PENSIONS.

# COUNTY REVIEW

|  | PAGE |   | PAGE |
|--|------|---|------|
| INTRODUCTION - - - - -   | 214  | Consequential Proposals - - - - -   | 227  |
| DEVELOPMENT OF LOCAL GOVERNMENT DISTRICTS BETWEEN 1847 AND 1929 - - - - -                | 215  | Submission of Report and Proposals - - - - -                                | 227  |
| ROYAL COMMISSION ON LOCAL GOVERNMENT 1923—1929 - - - - -                                 | 216  | Notice of Making Proposals - - - - -  | 228  |
| STATISTICS RELATING TO BOROUGHS AND DISTRICTS IN 1929 - - - - -                          | 218  | REPRESENTATIONS TO MINISTER AGAINST PROPOSALS - - - - -                     | 228  |
| FIRST GENERAL REVIEW - - - - -   | 219  | LOCAL INQUIRY INTO PROPOSALS - - - - -                                      | 229  |
| SECOND AND SUBSEQUENT REVIEWS - - - - -  | 219  | Necessity - - - - -   | 229  |
| COMPARISON OF SECT. 46 OF THE L.G.A., 1929, WITH SECT. 146 OF THE L.G.A., 1933 - - - - - | 219  | Inspection of Areas Affected - - - - -                                      | 229  |
| PRACTICAL ASPECT OF THE SECOND AND SUBSEQUENT REVIEWS - - - - -                          | 220  | Conduct of Local Inquiry - - - - -  | 229  |
| Preliminary - - - - -  | 220  | Objections which may be Heard - - - - -                                     | 230  |
| Purpose of Future Reviews - - - - -  | 221  | MODIFICATIONS OF PROPOSALS BY M. OF H. - - - - -                            | 230  |
| Formulation of Proposals - - - - -   | 221  | PROCEDURE UNDER SECT. 146 (5) OF THE L.G.A., 1933 - - - - -                 | 231  |
| What Proposals may be made - - - - -   | 223  | POSITION OF ADJOINING COUNTY BOROUGH COUNCILS AND COUNTY COUNCILS - - - - - | 233  |
| Considerations to be taken into account when formulating Proposals - - - - -             | 223  | DE-URBANISATION - - - - -   | 234  |
| Method of Preparation of Report of Proposals - - - - -                                   | 226  | SUPPLEMENTARY PROPOSALS - - - - -   | 234  |
|  |      | ORDER OF MINISTER OF HEALTH   | 235  |
|  |      | SURVEY OF POSITION FOLLOWING FIRST GENERAL REVIEW - - - - -                 | 235  |
|  |      | LONDON - - - - -  | 235  |

*See also titles :*

ALTERATION OF AREAS ;  
CHARTERS OF INCORPORATION ;  
COUNTY BOROUGH, CREATION OR  
ALTERATION OF ;

COUNTY DISTRICTS ;  
INQUIRIES.

**Introduction.**—The phrase “county review” and all that it implies is derived from sect. 46 of the L.G.A., 1929 (*a*). Prior to the operation of this section, Parliament had provided no machinery whereby a simultaneous overhaul of the administrative areas in a county could be undertaken. The section was framed to achieve this end, and required all county councils (*b*) as soon as possible after the commencement of the Act (April 1, 1930) to carry out the first general review of the county districts wholly or partly within their respective counties. Sect. 47 of the Act provided for subsequent periodical reviews to be made, but this section has since been repealed by Part IV. of the Eleventh Schedule to the L.G.A., 1933 (*c*). Provision for future reviews has, however, been made by sect. 146 of the 1933 Act (*d*). Under this section a county council may, at any time after the expiration of

(*a*) See 26 Statutes 916.

(*b*) There is, however, the safeguarding provision included in sub-s. (6) of s. 46 in respect of a county which had already within three years before the commencement of the Act, undertaken a general review of the circumstances of its county districts. It is understood that no county council have taken advantage of this provision. It would not, in any case, relieve them from making proposals under the section.

(*c*) See 26 Statutes 587.

(*d*) *Ibid.*, 384. S. 46 was not, however, repealed.

ten years from the completion of the first general review under sect. 46 of the Act of 1929, whenever they think it desirable—and must, if so required by the Minister of Health—after holding the necessary conferences, review the circumstances of the county districts wholly or in part situate within their county, and put forward proposals for changes to be made. Sub-sect. (8) provides that the interval between any two reviews under the section is in no case to be less than ten years.

In the majority of cases the duties of county councils under sect. 46 of the Act of 1929 have now been completed, although there are a few instances where local inquiries have yet to be held and orders of the M. of H. giving effect to the first review still to be made (e). As it was rightly assumed to be impossible for all the necessary orders to be made prior to June 1, 1934 (the date on which the L.G.A., 1933, came into operation), it was considered undesirable to repeal sect. 46 and reproduce it—in so far as it concerned the first general review—in the Act of 1933. The position is, therefore, that sect. 46 of the Act of 1929 continues to apply in respect of the first general review, while provision for the second and subsequent reviews is made by sect. 146 of the 1933 Act. The latter section reproduces sect. 46 almost word for word, subject to a few minor amendments which will be dealt with later, and as this article will have principally as its object, owing to the advanced stage of the first review, the assistance of persons in connection with the conduct of future reviews, reference will so far as possible be to the later section. As, however, a number of observations contained herein will be based upon the general practice and procedure of the first review and upon points of law which arose in one or other of the counties, it will be necessary constantly to refer to sect. 46 of the Act of 1929. Unless otherwise stated, however, they will have equal application to the appropriate words as re-enacted in sect. 146 of the 1933 Act.

This article will deal solely with the question of the periodical reviews of county districts. It will be appreciated that pending these reviews from time to time, there are other ways—in particular under sects. 140 and 141 of the L.G.A., 1933 (f)—by which alterations of areas can be effected, and for this the reader is referred to the title *ALTERATION OF AREAS* (at pp. 255—267 of Vol. I.). Nor will this article deal with charters of incorporation or the creation of county boroughs, or indeed any other possible change in status, area or jurisdiction of any local or other authority except such as may come under the head of “consequential proposals” following a review of county districts. All these matters are dealt with under separate titles. [408]

**Development of Local Government Districts between 1847 and 1929.**—To enable a full and proper appreciation to be obtained of the extent of the changes which have been and are about to be accomplished in local government administration in England and Wales by means of county reviews, and of the problems both administrative and legal to be contended with, it is necessary first to give a brief summary of the system of local government in operation in this country at the commencement of the last century and to trace the course of events down to the passing of the L.G.A., 1933.

In 1885, the local government system of England was aptly described (g) as a “chaos of areas, a chaos of franchises, a chaos of

(e) See *post*, p. 235.

(f) 26 Statutes 879.

(g) By Mr. Rathbone (see Redlich and Hirst's *Local Government in England*, Vol. I., p. 194).

authorities, and a chaos of rates" brought about by the passing of un-co-ordinated legislation following the Reform Act of 1832 (*h*). During the eighteenth and early nineteenth centuries, the parish was the basic administrative area. The parochial authorities were in general of the most primitive type. Their constitution individually showed the most extreme variations, but in the most usual type the open vestry appointed unpaid and unskilled parishioners annually to the administrative offices. These offices were often regarded, naturally enough in the circumstances, as disagreeable burdens to be avoided whenever possible, and to be performed with the minimum of trouble to the holder. The central government hardly concerned itself at all with the parochial administration. The defects of this system had led the county justices in quarter sessions to develop an elaborate and extensive system of supervision and stimulation on their own initiative. Besides these supervisory and stimulatory functions, quarter sessions had developed their own powers of direct administration. Large numbers of boroughs had become, by the end of the eighteenth century, moribund and corrupt, existing for the benefit of the corporators rather than of the general public, the corporators often forming only a small fraction of the inhabitants. At that time, the boroughs as a whole contributed little of value to the local administration. A great number of *ad hoc* bodies had been formed by the initiative of private persons to perform particular functions. The defects of the system had thus been left by the central government to be remedied by private action, and it was not until after the passing of the Reform Act, 1832, that efforts on a large scale were made by the central government to co-ordinate and improve local administration. The local administration was being reformed in all its branches in a somewhat piecemeal way, all through the middle of the nineteenth century, the process being somewhat complicated by the lack of any uniform method of approach to the problems, particular functions being dealt with at different times and in different ways; poor law, highway, and public health functions being only very loosely co-ordinated, and the three not being finally gathered into a comprehensive system until the L.G.A., 1929, came into force (*i*). The intermediate steps are too numerous and too complicated to be described here.

At the beginning of the twentieth century, the position had more or less crystallised under an enormous number of extremely complicated Acts of Parliament, and after the passing of the Education Act, 1902 (*k*), showed no major alterations until the passing of the Act of 1929. [409]

**Royal Commission on Local Government 1923–1929.**—But the system in operation was considered by no means perfect, and in 1923 there was set up the Royal Commission on Local Government (*l*), composed of representatives (*m*), *inter alia*, of the interests of county councils, county and non-county borough, and urban and rural district councils. The terms of reference to the commission (*n*) were "to inquire as to the existing law and procedure relating to the extensions of county boroughs, and the creation of new county boroughs in England and Wales, and

(*h*) 2 & 3 Will. 4, c. 45.

(*i*) 10 Statutes 883.

(*k*) 2 Edw. 7, c. 42.

(*l*) Appointed by Royal Warrant, dated February 14, 1923.

(*m*) For membership of Commission, see p. iii. of First Report (issued 1925), Cmd. 2506.

(*n*) *Ibid.*, pp. xxvi. and xxvii.

the effect of such extensions or creations on the administration of the councils of counties and of non-county boroughs, urban districts, and rural districts ; to investigate the relations between these several local authorities ; and generally to make recommendations as to their constitution, areas and functions."

By Royal Warrant dated August 4, 1926, the terms of reference of the commission (*o*) were extended to embrace the constitution, areas and functions of parish councils and parish meetings.

The Royal Commission, over which Lord Onslow presided, sat for six years, and issued their report in three parts. Part I. (relating to the constitution and extension of county boroughs) was issued in August, 1925 (*p*) ; Part II. (which deals with the relations between local authorities, and their constitution, areas, and functions generally) in October, 1928 (*q*) ; and a Final Report in November, 1929 (*r*). Effect was given to the main recommendations contained in the First Report of the Royal Commission by the passing of the L.G. (County Boroughs and Adjustments) Act, 1926 (*s*), and on the issue of the Second Report there followed the introduction of the Local Government Bill, which after its passage through Parliament became law in the form of the L.G.A., 1929 (*t*). The Bill was essentially based upon the recommendations of the Royal Commission, which represented and had heard evidence emanating from every type of local authority in the country.

Thus by the passing of sect. 46 of the 1929 Act, provision was made for the removal of the first of the above-named cardinal defects of the local government system of this country, as mentioned by Mr. Rathbone in 1885, the "chaos of areas." The "chaos of franchises" had been eliminated by a series of statutes culminating in the Representation of the People Acts of 1918 (*u*) and 1928 (*a*), while the reforming provisions of the L.G.As. of 1888, 1894, and 1929, combined with the abolition of overseers by the R. & V.A., 1925 (*b*), set in order the "chaos of authorities." The "chaos of rates" had been finally rectified by the Act last mentioned, which provided for the levying of one general rate. Parliament, however, perceived that, although much would be done by the first review under sect. 46 of the L.G.A., 1929, to rationalise the system of local government in the country, provision should be made for further general reviews to be undertaken so as to ensure such further modifications as time might prove necessary. This was effected by sect. 47 of the Act.

Lastly came the passing of the L.G.A., 1933 (*c*). A consolidation of the law relating to local authorities had been much needed for many years past, and this has now been partly effected by the passing of that Act following upon the recommendations of the Chelmsford Committee. Under it, as mentioned above, sect. 47 of the L.G.A., 1929, is repealed, and is re-enacted in sect. 146, which sets out the manner in which the second and subsequent reviews are to be conducted. When introducing the Bill into Parliament, the Minister of Health, on behalf of the Government, made it clear that it was purely a consolidating measure, and only included amendments to the existing law which would prove to be uncontentious in their nature. Thus it is that despite the fact that a number of representations were made by the County Councils Associa-

(*o*) *Ibid.*, Second Report (issued 1928), p. ix.

(*q*) Cmd. 3213, price 1s. 6d. net.

(*s*) 10 Statutes 878.

(*u*) 7 Statutes 548.

(*b*) 14 Statutes 617.

(*p*) Cmd. 2506, price 9s. net.

(*r*) Cmd. 3436, price 3s. net.

(*t*) *Ibid.*, 883.

(*a*) *Ibid.*, 651.

(*c*) 26 Statutes 295.

tion and other bodies for important modifications to be made in what is now sect. 146 of the Act of 1933, no such modifications were made, as they would have been likely to arouse opposition and jeopardise the passage of the Bill into law, and sect. 146 appears to all intents and purposes as a re-enactment of sects. 46 and 47 of the Act of 1929.  
[410]

**Statistics relating to Boroughs and Districts in 1929.**—No attempt has been made in the above summary to examine in any detail the evidence laid before the Royal Commission (*d*) or the recommendations (*e*), reached by that body, as the provisions contained in sect. 46 of the L.G.A., 1929, and sect. 146 of the L.G.A., 1933, are in the main based on these recommendations. To appreciate the practical results of the first general review it is necessary, however, to consider for a moment certain of the comprehensive statistics relating to the number, size and financial resources of the local authorities in existence on April 1, 1927, as presented to the Royal Commission (*f*). On that date there existed in England and Wales (in addition to the 62 county councils, 83 county boroughs, and approximately 5,646 parish meetings, and 7,166 parish councils), 1,698 non-county boroughs or districts made up as follows :

|                     |   |   |   |   |   |   |   |   |       |
|---------------------|---|---|---|---|---|---|---|---|-------|
| Rural districts     | - | - | - | - | - | - | - | - | 658   |
| Urban districts     | - | - | - | - | - | - | - | - | 785   |
| Non-county boroughs | - | - | - | - | - | - | - | - | 255   |
| <hr/>               |   |   |   |   |   |   |   |   |       |
|                     |   |   |   |   |   |   |   |   | 1,698 |

Of these, 494 (66 boroughs, 302 urban districts, and 126 rural districts) had a population of 5,000 or less, 430 of which (65 boroughs, 264 urban districts, and 101 rural districts) had a product of a 1*d.* rate of less than £100. It is interesting to note that between the passing of the L.G.A., 1888, and April 1, 1927, 270 urban districts and 118 rural districts had been formed, in 1883 and 71 of which respectively the populations according to the last census before formation were under 5,000. From these figures, it will be appreciated that the financial capacity of many of the small areas was greatly restricted, while there existed a wide variation in size and capacity among authorities of identical types.

"There has been no comprehensive reorganisation by Parliament of the areas of local government within what are now administrative counties since the P.H.A., 1872," the Royal Commission stated in their report (*g*), and bearing in mind that the diversity and complexity of the services to be administered had so increased that many of the areas were incapable of meeting the demands of local government, they unanimously expressed the opinion that the need for a general review of areas of county districts and parishes had been established (*h*).

The commission further stated (*i*), "The primary object of the reorganisation of areas recommended by us, and indeed of all alterations of local government areas, being to improve their local administration, we are hopeful that the adoption of our proposals on this subject, and of those in our first report, will result in the elimination to a large

(*d*) See Second Report, pp. 6—14.

(*e*) See *ibid.*, pp. 15—19.

(*f*) For full details of following statistics, see *ibid.*, pp. 6—8.

(*g*) *Ibid.*, p. 9, para. 25.

(*h*) *Ibid.*, p. 15, para. 39.

(*i*) *Ibid.*, p. 25, para. 61.

extent of those councils of county districts who by themselves are not strong enough financially to perform the essential sanitary services, and that most parts of the country will be within the jurisdiction of local authorities who are able to discharge their duties without further financial assistance." In their report, the commission then proceeded to set out certain suggestions as to the manner in which the review might be carried out. [411]

**First General Review.**—Every county council by March 31, 1934, had submitted proposals for changes of area to the M. of H. under sect. 46 of the L.G.A., 1929, except the county council of the West Riding of Yorkshire, and, in respect of a small part of Cheshire, the county council of Cheshire. In these two instances, the period for the submission of proposals was extended by the Minister to the end of the year 1934. According to the Annual Report of the M. of H. for the year 1933-34, sixty-three orders affecting forty-one counties had by March 31, 1934, been issued by the Minister under the section. In the Soke of Peterborough, as well as in the counties of Radnor and Rutland, the county councils decided not to make changes in their administrative areas, and the Minister saw no sufficient reason to dissent from their decisions (*k*). Further reference to the present position is made on p. 235, *post*. [412]

**Second and Subsequent Reviews.**—Some time will yet have to elapse before any county council will be able to embark upon its second review of county districts (*l*), as there must be an interval of at least ten years between the first and second reviews. It should be borne in mind in this connection that there is no obligation under sect. 146 upon a county council to carry out a review every ten years. The section states that a county council *may* undertake a second review at any time after the expiration of ten years from the completion of the first review, and that the interval between the second and subsequent reviews shall in no case be less than ten years. The Minister may, however, after a period of ten years has elapsed, require a second or subsequent review to be undertaken, and the report on the review must be presented to him forthwith after the review is completed (*m*). [413]

**Comparison of sect. 46 of the Act of 1929 with sect. 146 of the Act of 1933.**—As sect. 46 of the L.G.A., 1929, is still on the statute-book it is well to compare its provisions with those contained in sect. 146 of the L.G.A., 1933. Sub-sect. (1) of sect. 146 of the 1933 Act consolidates and re-enacts s. 46 (1) (a) to (e), part of sect. 46 (2), and sect. 47 (1) of the 1929 Act, and in addition specifically provides in sub-sect. (1) (b) that future reviews of county districts may include proposals for the division of an urban or rural district or parish.

Sect. 146 (3) makes more explicit certain words contained in s. 46 (3) by stating that copies of the proposals are to be sent to the councils of the several county districts *appearing to the county council to be concerned* instead of to the several districts affected thereby, while later on in the sub-section the words "and that a copy thereof is open to inspection at a specified place," which appear in sect. 46, are qualified by the addition of the words "within the county."

(*k*) The County of London was excepted from the provision for general reviews; see s. 66 (3) of the Act of 1929; 10 Statutes 927.

(*l*) I.e. non-county boroughs, urban and rural districts; see L.G.A., 1933, s. 305; 26 Statutes 465.

(*m*) See s. 146 (1); 26 Statutes 384. Cf. L.G.A., 1929, ss. 46, 47; 10 Statutes 916.

Sect. 146 (6) is a re-enactment of sect. 47 (2) of the L.G.A., 1929, and sect. 146 (7) reproduces sect. 46 (7). Finally, sect. 146 (8), which states that the interval between any two reviews under the section is not to be less than ten years, re-embodies the last few words of sect. 47 (1) of the L.G.A., 1929, which is repealed.

All the above alterations may be described as drafting amendments. On the other hand, alterations of substance have been made in sects. 148 and 149 of the Act of 1933 (*n*) which describe the supplementary provisions which may be included in an order for an alteration of boundaries. These sections are founded on sect. 59 of the L.G.A., 1888 (*o*). In particular, it was doubtful how far orders authorising a gas or electricity undertaking could be amended under that section by an order altering boundaries, *e.g.* whether the limits of supply could be correspondingly adjusted. The new provisions allow a local Act or statutory order relating to a gas or electricity undertaking to be amended with the consent of the Board of Trade or M. of T., as the case may require. (See the provisos to sects. 148 (1) and 149 (2) of the Act of 1933.) [414]

**Practical Aspect of the Second and Subsequent Reviews.—Preliminary.**—The second general review by county councils will undoubtedly prove to be an easier task than the first, as the greatest of the anomalies previously existing will have been dealt with during the first review. Furthermore, local authorities will have the advantage of the cumulative experience gained in the conduct of the first review. The Memoranda (*p*) circulated by the M. of H. on the occasion of the first review for the information of county councils, town councils, urban and rural councils, should be sought out and read carefully. So far as procedure is concerned, it is imagined that this will be similar in all respects to that followed during the first review with this important difference, that if the resulting proposals of a county council seek to alter the boundaries of a non-county borough, and are objected to by the council of that borough, that council may, within four weeks of the making of the order by the Minister, by which effect is given to the proposal, object to it, and in that event the Minister's order will become provisional only, and will need confirmation by Parliament (*q*).

The work entailed in the preparation of the first review was in the majority of counties entrusted to a special "*ad hoc*" committee, named either the "Local Areas," "County Boundaries," or "County Review" committee, and county councils will perhaps find it desirable to adopt a similar practice in the future. The committee should as far as possible be representative of every part of the county, and may well be authorised to appoint sub-committees where a large area is to be reviewed (*r*). [415]

(*n*) 26 Statutes 386.

(*o*) 10 Statutes 734.

(*p*) Memorandum L.G.A. 15, dated May 17, 1929, price 2d., and Memorandum L.G.A. 24, dated September, 1929, price 1d.; with Appendices thereto (Revised May, 1930), price 2d.

(*q*) L.G.A., 1933, s. 146 (6); 26 Statutes 385. The corresponding provision in s. 47 (2) of the Act of 1929 did not extend to the first review.

(*r*) This course was adopted in Warwickshire, where one sub-committee was concerned with the mining and industrial areas in the north and the other with the agricultural areas in the south of the county. In Cheshire and some other counties, the county was for this purpose divided up into more than two areas but, except in those instances where it was deemed inexpedient to deal with the whole area in one report, the sub-committees proceeded simultaneously and finally presented their considered views to the full committee for submission to the county council. In Lancashire, the county was divided up into six self-contained areas, in respect of each of which a separate review was undertaken.

*Purpose of Future Reviews.*—The object underlying the second review will differ materially from that of its predecessor. The first review, being the initial opportunity given to county councils to make a comprehensive examination of the local government machinery in their respective counties, was essentially a thorough investigation and complete overhaul of all that came within their purview. Now that that has been accomplished, it is not likely that so thorough a review will be required within such a short period as ten years.

The second review will therefore presumably be undertaken primarily for the purpose of making alterations in boundaries, and varying the status of authorities to keep abreast of the times (*s*). One place may have increased in population owing to expansion in trade, another may have decreased as a result of depression in industry, and these fluctuations in the population must be met by the formation of local government units of sufficient size and capable of maintaining a good administration. In consequence, it is probable that, as such changes are usually local, the proposals will merely relate to a part or parts only of a county, although the circumstances of all county districts will again have to be reviewed (*t*). The principle of submitting reviews for self-contained areas in respect of the second and subsequent reviews will again be admissible. It is well to note here, however, that when a county is reviewed in sections, it is not possible for any one district to be dealt with more than once within ten years.

The aim which every county council will undoubtedly keep in the forefront will be to provide the best and most efficient form of local government for the population affected, by the elimination of redundant and inefficient units, and by so reorganising the county as to strengthen the administration of sanitary services within the area and to distribute more equitably the financial burdens thereby entailed. [416]

*Formulation of Proposals.*—Before undertaking the next review, county councils are again required first to hold conferences (*u*) with representatives of the councils of non-county boroughs and districts wholly or in part situate within the county in order to obtain their views and suggestions before any concrete proposals are put forward. Experience has shown during the first review that it is wise to extend this preliminary exploration of the situation as widely as possible by consulting, in addition, representatives of other local bodies such as parish councils and parish meetings. In many cases, the effect has been that a better understanding has been promoted, and the number of objections to the proposals, as eventually put forward, reduced. In addition, in a number of counties, it was found of advantage to hold conferences with representatives of adjoining county borough councils, before framing the

(*s*) Except in the more populous areas around the Metropolis where in accordance with the Ullswater Report, the establishment of larger local government areas may prove to be necessary. Also in some counties, the question of the amalgamation and the review of the boundaries of rural parishes has been deferred until the next review, when the matter will no doubt receive further consideration.

(*t*) If a county council desire to modify their proposals before the local inquiry is held, apparently they may do so and send revised proposals to the Minister; see judgment of Avory, J., in *R. v. M. of H., Ex parte Purfleet U.D.C.* (1934), 98 J. P. 275. Appeal to C.A. dismissed; *ibid.*, 427; Digest (Supp.). It is understood that an appeal to the House of Lords is pending.

(*u*) A preliminary meeting to discuss questions of procedure and general considerations, and at which no constructive proposals of a definite character are to be advanced, cannot, having regard to its limited scope, fairly be regarded as such a conference (decision of Minister of Health reported to Surrey County Council, November 24, 1931, after submissions at Surrey Inquiry, October 26, 1931).

proposals. In any event, the proviso to sect. 146 (1) of the Act requires county councils, before making their proposals, to consult with the councils of the county boroughs adjoining their counties.

Various methods were adopted by county councils during the first review in framing their proposals and in their consultations with borough and district councils. In a number of counties, the borough and district councils themselves were invited in the first instance to submit suggestions. This was usually done by a circular drawing their attention to the duty imposed upon the county council and inviting suggestions for consideration by the review committee. After a careful consideration of all replies received, the county committee then proceeded to draw up tentative proposals which were circulated to all such councils in the county, and in a number of cases to the parish councils concerned as well, and informal conferences (*a*) were then arranged between representatives of both sides for a frank interchange of views in the friendliest spirit. In this connection it should be noted that the Act does not authorise the holding of public inquiries by county councils, but merely provides for the holding of conferences of representatives. Too great an emphasis cannot be laid upon the desirability of the greatest possible number of informal discussions and conferences on future reviews.

When the various informal conferences have been held to consider the tentative proposals, the county council are in a position to frame a draft of the proposals which they consider should be forwarded to the Minister. In so doing, they will no doubt weigh the many considerations which have been placed before them, bearing particularly in mind the delimitation and enlargement of areas to enable the local authorities, as reorganised, efficiently to discharge their functions and to enable them to be placed in such a financial position as will permit them to provide all the necessary sanitary and other services without special assistance, as well as placing them in a position to employ fully qualified whole-time officers.

Copies of the draft proposals should then be circulated to all the local authorities concerned, including the appropriate parochial authorities, for their observations. Liberal publicity should be given to the draft proposals in order that the county council may have the opportunity of considering any representations from other interested parties before they arrive at the final recommendations. Experience proved, during the first review, that bodies such as ratepayers' associations took this opportunity of criticising the draft proposals.

Finally, any observations received on the draft proposals, either from borough councils, district councils or other sources, should be considered by the review committee, who should then prepare, for the information of the council, their report on the review undertaken, to enable that body to approve of (*b*), and submit the final proposals to the Minister for his consideration. [417]

(*a*) On the occasion of the first review, it became necessary in several counties for a series of consultations to be held, and in Kent and certain other counties the consultations were conducted not at county headquarters but in various parts of the county, while inspections of the areas concerned were carried out jointly by representatives of the county and other councils. This course undoubtedly secured a large measure of agreement, and ultimately avoided a number of objections which otherwise would have been made.

(*b*) The proposals must be those of the county council and not of an appropriate committee thereof, unless a direction has been given by the council under s. 85 of the L.G.A., 1933, that the proceedings of the committee need not be approved of by them (Surrey Inquiry mentioned *ante*, p. 221, note (*u*)).

*What Proposals may be Made.*—Details of the various types of changes which may be effected under a review of county districts (c), are set out in sect. 146 (1) (a) to (g). They may be briefly summarised as follows :

- (a) the alteration of the boundaries of non-county boroughs, urban and rural districts and parishes ;
- (b) the disestablishment of urban and rural districts ;
- (c) the formation of new urban and rural districts and parishes ;
- (d) the division and/or amalgamation of urban and rural districts and parishes ;
- (e) minor alterations of district and parish boundaries for the purpose of removing anomalies due to detached parts and unsuitable or inconvenient boundaries.

From the above and from the experience gained during the first review it will be appreciated that there is scarcely any change, whether it be the alteration of the boundaries, the union, division, transfer, conversion or formation of any county district or parish, which cannot be proposed by a county council under its review. The one exception to which attention should be drawn is with regard to non-county boroughs.

Proposals may not be included for the union of a non-county borough with another non-county borough, or the division of a non-county borough, or the conversion of a non-county borough into an urban or rural district, or *vice versa* (d).

This result follows from the terms of sect. 146 (1) of the Act of 1933, but is strengthened by the general saving in respect of municipal corpsns. included in sect. 301 of the Act (e). [418]

*Considerations to be taken into account when Formulating Proposals.*—When considering what proposals for the alteration of county districts and parishes are desirable, many considerations must be taken into account by a county council. The Royal Commission in their First Report, in commenting on the word "desirable," which had been borrowed from sect. 54 of the L.G.A., 1888 (f), stated that a proposal must be "desirable" in the interests of all concerned, and that, if the various interests were divergent, the question must be decided on an equitable balance as between those interests.

The following are some of the more important of the factors to be considered (g) :

#### GENERALLY.

- (i.) whether the proposed district will generally form a good unit of local government ;
- (ii.) what will be the size and financial resources of the proposed district (*i.e.* area, population, density, rateable value, product of a penny rate, outstanding loans, etc.) ;
- (iii.) whether the proposed district will possess sufficient financial resources to enable fully qualified whole-time officers to be employed, and to enable sewerage and sewage disposal

(c) No alteration of the boundary of a county can be effected under a county review.

(d) See also L.G.A., 1933, s. 146 (6) ; 26 Statutes 385.

(e) 26 Statutes 384, 464.

(f) 10 Statutes 730.

(g) Generally on the following, see para. 7 of M. of H. Memorandum, No. 24.

and other sanitary works to be provided without special assistance. Although the latter is a factor of some importance, it must not be looked upon as a governing consideration, in view of the arrangements which can now satisfactorily be made in such matters with other neighbouring local authorities.

#### THE PROVISION OF OTHER PUBLIC SERVICES SUCH AS WATER SUPPLY, GAS, ELECTRICITY AND TRANSPORT.

These services again, however, must not be considered to be determining factors in the review, as the time has long passed when they were deemed to be merely local services.

#### THE DESIRABILITY OF RETAINING OR ALTERING PRESENT BOUNDARIES.

The major question to be considered under this head is as to whether the union of certain districts or the transfer of part of a district to an adjoining borough or an urban or rural district will provide a more satisfactory unit of local government. Also important is the consideration of the topographical features of the proposed district, including the extent of catchment areas, the general lie of the land for drainage purposes, and the convenience of boundaries formed by rivers and other watercourses.

Further, when a highway is considered to be a convenient boundary, it should be ensured that the proposal provides for the boundary to be fixed along some permanent feature at a distance from the carriage-way, or, alternatively, at such a distance from the road as to allow a building depth sufficient to meet local conditions or the type of development likely to take place. The depth may vary between 150 and 300 feet, 200 feet being generally accepted as a suitable depth.

#### THE WISHES OF THE INHABITANTS.

Due weight should be given to the views of the local inhabitants, but the public advantage must prevail. Too often it was found during the first review that the inhabitants of a district were opposed to a proposal merely because a change was contemplated. A careful explanation of the proposed alteration will, however, usually do much to remove this type of opposition.

#### COMMUNITY OF INTEREST.

Due regard should be given to this. It implies a general common interest in a variety of matters such as a common centre for industry, shopping, and amusements, and sharing in various common services. A community of interest is constituted not by any one of these matters taken individually, but only as a whole. Furthermore, local sentiment and the past history of a particular district should not be lost sight of. During the first review,

the desire to preserve existing names at times led to proposals for lengthy and cumbersome names for new districts and parishes. The M. of H. point out that this should be avoided in the future as short names are a great administrative convenience (*h*).

#### EQUITY OF LOCAL BURDENS.

The distribution of local burdens between ratepayers in different areas has always been a factor in boundary questions. The normal method of application of General Exchequer Grants under the Act of 1929 in districts altered under the first review created difficulties in a few instances, in which it was found that unless the grant of the altered districts could be totally or partially pooled over the whole district, the incidence of rating would be unsatisfactory. To meet the difficulty the Minister issued amending regulations under sect. 94 of the L.G.A., 1929 (*i*).

#### DIFFERENTIAL RATES.

The allowance of an abatement from rates should be regarded not as a factor in deciding proposals, but merely as a consequence rendered imperative for equitable treatment on the alteration of an area. It should not be allowed unless warranted by exceptional circumstances. The Minister has expressed himself as being anxious that county councils should assist him by investigating and endeavouring where possible to reach a settlement of claims for differential rating. During the first review, county councils did so almost universally, and the procedure proved generally successful.

In cases where there are special reasons to justify differential rating, the method which has been found best in practice is to provide that the rate for the first year shall be less than the rate levied on the remainder of the district by a specified sum, and that the original abatement shall be reduced each year until the abatement disappears. Long periods are undesirable, and the period should, generally, not exceed ten years; usually a shorter period should suffice.

#### COMPENSATION AND FINANCIAL ADJUSTMENTS.

These matters must be regarded as purely consequential, the general law providing the necessary machinery for settling them after an alteration has taken place. If agreement can be reached on these questions in advance, so much the better. It should, however, be borne in mind that these factors should not be allowed to affect the consideration of proposals on their merits.

(*h*) See Annual Report of M. of H. for the year 1933-34, p. 196.

(*i*) 10 Statutes 942. See Annual Report of M. of H. for the year 1933-34, p. 196.

### REPRESENTATION OF PARISHES UPON DISTRICT COUNCILS.

When larger rural districts are to be formed, it is important that the advantages of the grouping of parishes for purposes of representation should not be lost sight of. It is conducive to economy and efficiency if the number of members of district councils is kept within manageable limits (*k*). [419]

*Method of Preparation of Report of Proposals.*—When a county council have finally decided what proposals shall be made, the report to the Minister containing those proposals can be prepared. The report should contain an account of the various steps taken in the review, details of the main proposals, and the reasons for them (*l*), as well as the consequential alterations proposed, and should be under the seal of the council. It will be found convenient for the report to be printed on foolscap paper and bound either with boards or a thick paper cover. As to the manner in which the general statistics of districts, assessment areas, guardians committee areas, petty sessional divisions, joint boards and committees, burial authorities, agreements, and other consequential alterations should be furnished to the Minister, the reader is referred to Appendix IV. to Memorandum L.G.A. 24, issued by the M. of H. (revised May, 1930), where he will find specimen forms numbered 1 to 11 respectively for his guidance.

As regards maps, the report should be accompanied by a key map of the county (to be known as Map "A") on a scale of approximately 1 inch to the mile illustrating the main outlines of the proposals. Further maps (Maps "B," scale 6 inch to the mile) should accompany the report to illustrate proposals that involve the alteration of boundaries. Existing districts and parishes should be indicated by distinctive light colour washes. When preparing Map "B," care should be taken to ensure that the map is brought up to date by indicating, in red, new buildings and streets. It is also desirable to indicate local services, etc., having a bearing on the proposals, such as sewage disposal works, routes of main sewers, waterworks, public buildings, housing sites, areas unsuitable for building, etc. In some instances a third map (Map "C") may be necessary to indicate proposals such as with regard to the constitution or alteration of wards, electoral divisions, petty sessional divisions, etc., when it is not possible for these to be shown on Map "B." As regards map notation, the reader is

(*k*) See Annual Report of M. of H. for the year 1933–34, p. 196.

(*l*) The Surrey County Council's report of their review contained some brief introductory matter, together with tables, etc., in the form required by the Minister. It was contended that these proposals failed to satisfy s. 46 of the Act of 1929, owing to the inadequacy of the statement of the reasons in support of the proposals. The M. of H. replied that s. 46 contains no express requirement that reasons shall be given. The fact that by sub-s. (4) of the section, local authorities have a right to object to proposals, and that the Minister cannot then decide without holding an inquiry, negatives the possibility that, in the absence of reasons, proposals might be accepted by the Minister without due consideration. Even if there be no objection, there is nothing to prevent the Minister from directing a local inquiry, if owing to the absence of reasons he is not satisfied that the proposals should be carried into effect (*ibid.*, Surrey Inquiry, October 26, 1931). The practice of not giving reasons for proposals is, however, highly undesirable for the obvious reason that if the reasons are not communicated to the local authorities affected by the proposals, a great deal of unnecessary friction is generated, and it is difficult if not impossible to discuss the proposals intelligently in their absence. If the reasons are to be so communicated, there is no reason why they should not be set forth in the proposals and many reasons of convenience why they should.

referred to Appendix III. of the M. of H. Memorandum L.G.A. 24 (revised May, 1930), where details, as to the manner in which the maps should be coloured and notations made, are clearly and fully set out. The Minister's later circular (*m*), intimating that some maps may be dispensed with and certain particulars omitted, should be read in conjunction with this Memorandum.

In addition to the maps referred to above, the majority of county councils during the first review found it desirable to attach or to enclose in a wallet attached to the inside of the back cover of the report a diagram map (scale  $\frac{1}{2}$  inch to the mile) illustrating generally the proposals for the alteration of county districts. The advantages of such a course are obvious, as without it the report is difficult to follow. Furthermore, a map drawn to this scale is in the case of most counties easy to handle. [420]

*Consequential Proposals.*—It will be readily understood that the bringing into operation of alterations of borough and district boundaries as the result of a review considerably affects the boundaries of other units of local government, such as guardians and assessment committee areas, electoral and petty sessional divisions, coroners' districts, wards of boroughs, etc., for which consequential adjustments are necessary. Proposals as to these must be contained in the report, and for the manner in which the information is to be supplied the reader is again referred to Appendix IV. of the M. of H. Memorandum L.G.A. 24.

Prior to the first general review, the M. of H. intimated that "consequential proposals" could only be regarded as such if they were rendered essential as a direct result of the alteration of boundaries. In other cases, however desirable an alteration in the constitution of any division or district might be, if it could not be regarded as strictly consequential, the prescribed procedure with regard to the alteration of the particular administrative area had to be followed. As in many instances it was found necessary to reorganise these areas, partly on account of the alteration of borough and district boundaries, and partly because the existing arrangements were out of date, the proposals were not in these cases dealt with in the Review Orders of the M. of H. as consequential, but were put into effect by the special procedure for altering these areas (*n*).

When preparing consequential proposals it is desirable that particular attention should be paid to the importance of providing, so far as is possible, for the boundaries of other administrative units to be made co-terminous with the boundaries of county districts, thus creating uniform boundaries throughout the county. [421]

*Submission of Report and Proposals.*—After final approval by the county council of the report, and the proposals contained therein, the report together with the maps, should be transmitted to the Minister. A form of certificate that the requirements of sect. 46 have been complied with in the manner indicated in Appendix II. to Memorandum L.G.A. 24,

(*m*) Circular issued in November, 1931.

(*n*) For guardians committee areas, see Poor Law Act, 1930, s. 5; 12 Statutes 971; L.G.A., 1929, s. 131; 10 Statutes 969; assessment committee areas, see R. & V.A., 1925, s. 16 (8); 14 Statutes 641; electoral divisions, see L.G.A., 1938, s. 11; 26 Statutes 310; petty sessional divisions, see Division of Counties Act, 1828, Petty Sessional Divisions Act, 1836, and Petty Sessional Divisions Act, 1859; 11 Statutes 243, 247, 308; and coroners' districts, see Coroners (Amendment) Act, 1926, s. 12; 3 Statutes 785.

should accompany the proposals. Simultaneously with their submission :

A copy of the proposals and maps must be deposited at a specified place (usually at the county offices) which should be of convenient access to the areas affected, and be open to inspection at all reasonable hours without payment ;

A copy of the proposals must be sent to the councils of the several boroughs and districts appearing to the county council to be concerned.

Further copies should be distributed as follows :

M. of H. - - - 6 copies of the proposals.

H.O. - - - 1 copy of the proposals, of Map "A," and—when proposals affecting wards or electoral divisions are made—of the Ward Map "B" or "C" as the case may be.

M. of A. & F. - - 1 copy of the proposals and of Maps "B" and "C."

Registrar-General - - 1 copy of the proposals.

So far as the copies of the maps to be sent to the H.O. and M. of A. & F. are concerned, only the existing and proposed boundaries of the districts, parishes, electoral and petty sessional divisions and wards need be shown. [422]

*Notice of Making Proposals.*—Sect. 146 (3) of the L.G.A., 1933 (o), requires that a notice (a model form of which is set out in Appendix I. of Memorandum L.G.A. 24) of the making of the proposals shall be published in one or more newspapers circulating in the districts affected. The advertisement must also state that a copy of the proposals is open for inspection at a specified place within the county, and that representations with respect thereto may be made to the Minister within six weeks after the publication of the notice. [423]

*Representations to Minister against Proposals.*—On receipt of the proposals, the Minister of Health must consider them and any representations made to him with respect to them. Objections may be lodged by any local authority (p) or parish meeting or by any local government electors (q) who may be affected. Furthermore, the Minister is required to give the councils of county boroughs adjoining the county an opportunity of laying before him their views upon the proposals (r). As a matter of convenience, a copy of every representation made to the Minister should be forwarded to the clerk of the county council.

Various reasons may be put forward as grounds for objection, such as that a proposal is not in the general interests of the community, that it is opposed to the wishes of a majority of the local government electors, that there has been inadequate consultation between the county council and the objecting authority, that an alternative proposal would be more suitable, that the premises contained in the report are incorrect, or that the beneficial results foreshadowed in the report would not in fact be realised. [424]

(o) 26 Statutes 384.

(p) For definition, see L.G.A., 1933, s. 305; *ibid.*, 465.

(q) For definition, see *ibid.*

(r) See proviso to s. 146 (1) of the L.G.A., 1933; *ibid.*, 384.

**Local Inquiry into the Proposals.** *Necessity.*—If an objection is made by a local authority to any proposal by which it is affected, the Minister must before making an order giving effect to the proposal—unless the objection is subsequently withdrawn—first cause a local inquiry (*s*) to be held, to inquire into it. Prior notice of the proposal to hold the inquiry in which it is stated that any person interested will be heard, is issued by the M. of H. (*t*). It was found during the first review that local inquiries had to be held in every case, owing to objections lodged, except in Montgomeryshire, where the proposals consisted merely of the amalgamation of several small rural parishes, and in West Suffolk, where no objections were lodged. [425]

*Inspection of Areas Affected.*—During the first general reviews, the inspectors of the M. of H. in all cases, prior to opening the actual inquiry, visited the districts affected by the proposals, paying particular attention to those areas in respect of which objections had been lodged. The inspectors usually gave notice beforehand of the route they proposed to follow (with times), with the result that they were often able to converse on the spot with representatives of the district and parish councils concerned and with local inhabitants who attended. The inspector's task, when he makes his tour of inspection, would naturally be much facilitated by the presence of a member of the staff of the county council, either from the clerk's department or the surveyor's, or from both, who would be able to assist him in relating the maps to the visible countryside. There is, however, one great difficulty in following this course. The inspectors' duty is to report on proposals against which criticism has been directed. It is most undesirable that he should have the proposals explained to him in a preliminary manner by the party making them in the absence of the party criticising them, see e.g. a recent decision of the Court of Appeal (*u*). If a contested proposal is to be explained to the inspector on behalf of the county council, it is most important to make sure that the objectors will attend. [426]

*Conduct of Local Inquiry.*—Generally speaking, the local inquiry is held, as a matter of convenience, at county headquarters. Amplification of the proceedings by the installation of microphones and loud speakers, in big halls and where the attendance is a large one, is to be recommended. The costs incurred by the inquiry, including the expenses of the inspector, are payable by the county council.

As is only to be expected, the procedure adopted in the conduct of inquiries on the first reviews varied somewhat in different localities. Some county councils contended that the report containing their proposals constituted their case, and beyond supplying the inspector with any additional information he required, stated they had nothing further to add (*v*). In some cases, the clerk of the county council

(*s*) Under s. 146 (4) of L.G.A., 1933; 26 Statutes 385.

(*t*) Any person interested may attend, although s. 146 (3) of the L.G.A., 1933, imposes a time limit for the submission of representations. *Held* at the Kent Inquiry (September 7, 1932), that a county councillor who resided in a certain rural district, but not in the particular parish affected, but who, however, represented the electoral division in which that parish was included, is a person interested.

(*u*) *Re Housing Acts, 1925-1930, Errington v. Minister of Health* (1934), 99 J. P. 15; Digest (Supp.).

(*v*) If such a course is to be followed it is obvious that the proposals should themselves contain full reasons for their provisions.

appeared on behalf of the council, but in most instances counsel were employed. In those instances where the case for the county council was presented fully, the course generally adopted was for an outline of the proposals first to be given, and for an explicit analysis of those proposals to which objections had been lodged to follow, including a statement as to the reasons why they were considered desirable. At the close of this address, two or three witnesses were usually called, the first generally being either the chairman of the county council or the chairman of the review committee, the second an officer of the council (*a*)—either the surveyor or the medical officer according to the circumstances—and then possibly a local witness. In some counties the services of consulting engineers were engaged to assist in formulating proposals and giving evidence. It is obvious from the proceedings on the first reviews that no definite principles can be laid down for the guidance of county councils in the future. The circumstances of each case must govern the manner in which the proposals are to be presented to the inspector, but emphasis should be laid upon the desirability of avoiding, as far as possible, expense in the conduct of the inquiry. It must be reiterated that a full preliminary explanation to and consultation with the smaller local authorities will greatly reduce opposition and consequently less expense will be incurred. [427]

*Objections which may be Heard.*—Sect. 146 (3) of the Act of 1933 (*b*), implies that any representations must be lodged with the Minister of Health within six weeks after the publication of the notice of deposit. This sub-section re-enacts sect. 46 (3) of the 1929 Act. Strictly speaking, a local authority whose area is not affected by a review have no *locus standi* at an inquiry. Sect. 146 (5), however, gives an aggrieved authority power to submit their case direct to the Minister (*c*), if the county council have failed to make a proposal for the change desired. In practice, during the first review, a considerable latitude was extended, generally to would-be objectors, the principle upon which the majority of inspectors acted being to give a full hearing—provided it was relevant to the case—to any person, if by so doing a better appreciation of the facts could be obtained (*d*). [428]

**Modifications of Proposals by Minister of Health.**—The provisions contained in sect. 146 (4) of the L.G.A., 1933 (re-enacting in respect of

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(*a*) In the Holland Division of Lincolnshire, the clerk of the council, who presented the case, was pressed to give evidence and undergo cross-examination by counsel appearing in opposition. This he refused to do and his action was supported by the inspector.

(*b*) 26 Statutes 384.

(*c*) In Glamorganshire, where certain representations were made to the Minister after the expiration of the six weeks, on the question being raised by the county council, the Minister of Health replied that s. 46 (3) of the L.G.A., 1929, related only to representations with respect to *proposals* made by a county council under the section, and that as *no changes (not proposals)* in the existing county districts were contemplated by the county council he was advised that any representations from local authorities in regard to the review must be regarded as being made under s. 46 (5), and further, that the last-mentioned sub-section imposed no time limit on the making of representations. In the county of Durham, the county council contended that certain representations should be dealt with under s. 46 (5), but the Minister decided that in so far as the representations referred to areas which were affected by the county council's proposals such representations could properly be heard at the inquiry into the proposals.

(*d*) In Lancashire, the policy was adopted of allowing every local authority to be heard at conferences or at inquiries held by the Minister's inspectors irrespective of whether the area of the authority was affected or not.

future reviews sect. 46 (4) of the L.G.A., 1929), are useful in so far as they enable the Minister to make modifications in a scheme in the light of information obtained as the result of a local inquiry by an inspector. During the first review, the Minister of Health adopted three procedures in dealing with proposals of county councils :

- (a) where the modification resulted in a reduction of an area proposed to be transferred, the modification was made without notice ;
- (b) where the modification entailed the addition of a further area to that proposed by the county council for transfer, the modification was made provisionally and observations were invited from the county council and the other local authorities concerned before a final decision was given. The county council were also required to publish by posters a notice of the proposed change so as to afford an opportunity for ratepayers to put their views before the Minister ;
- (c) where the Minister thought a change desirable which was different from that proposed by the county council, he referred back the proposal for reconsideration by the county council with a view to amended proposals being submitted.

In several cases, amended proposals have been submitted to the Minister (e). The view, however, has been held in other quarters that the Minister has no power to suggest the putting forward of new proposals, and all that he can do is either to approve proposals with or without modifications or disapprove them. The Divisional Court has upheld the Minister's interpretation by a majority (f), and this decision has since been affirmed by the Court of Appeal. The dividing line between an admissible modification of a proposal and such an alteration of it as would require the submission by the county council of a new proposal is not easy to draw. But it is suggested that on a proposal for the extension of a borough or urban district, it would be inadmissible to mould it either into a proposal for the conversion of the area so to be added into a new urban district, or into a proposal involving the abolition of the urban district which was proposed to be extended. [429]

**Procedure under sect. 146 (5) of the L.G.A., 1933.**—Sect. 146 (5) of the L.G.A., 1933, provides that if on representations being made, it appears to the Minister, after consultation with such authorities as appear to him to be concerned, that there is a *prima facie* case for making a change under the section, and that a county council have failed to make a proposal for the purpose within the time allowed, he may after advertising that he proposes to make the change, and depositing his proposal locally, and after considering any objections and holding a local inquiry,

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(e) See Annual Report of M. of H. for the year 1933-34, p. 195.

(f) *R. v. Minister of Health, Ex parte Purfleet U.D.C.* (1934), 98 J. P. 275; 32 L. G. R. 221; Digest (Supp.), where the amended proposals of the Essex County Council were objected to on legal grounds by one of the local authorities affected who obtained rules *nisi* for writs of prohibition, *certiorari* and *mandamus* against the Minister. The Minister after considering the inspector's report of the inquiry, had asked the county council to reconsider certain of their proposals, and submit to him amended proposals. This the county council did, and the objectors claimed that the county council had no power to amend their proposals. The Divisional Court decided by a majority in favour of the Minister's interpretation, the Lord Chief Justice and AVORY, J., finding for the Minister, while TALBOT, J., dissented. AVORY, J., went so far as to say that there was nothing to prevent the county council from submitting a revised scheme before the local inquiry, and that in any case they could exercise powers under the L.G.A., 1888. For report of the decision of the C.A., see 98 J. P. 427; Digest (Supp.). It is understood that an appeal to the House of Lords is pending.

if they are not withdrawn, make an order effecting the change, or such modified change as appears to him to be expedient. During the first review, a number of local authorities made representations to the Minister under sect. 46 (5) of the L.G.A., 1929 (re-enacted in respect of future reviews by sect. 146 of the L.G.A., 1933), requesting him to make changes not proposed by county councils. In some instances, the county council amended their proposal (g), to meet the representations made, but in others the applicants failed in the opinion of the Minister (h) to make out a *prima facie* case for the alterations desired. Orders have been issued under the sub-section by the Minister relating to the boroughs of Cambridge (i) and Rye, and to the rural district of St. Germans.

This broad construction of the sub-section has caused much apprehension to county councils, as it would appear that any municipal borough is thereby enabled to utilise the occasion of a county review to obtain an order of the Minister of Health extending their borough without the county council and the district council concerned having a right of opposing a Bill for the confirmation of the order before a Parliamentary Committee, as where a borough is extended by provisional order of the Minister. The matter has been brought before the County Councils Association, who were urged to negotiate with the Minister on the subject, and press for an amending clause to be incorporated in the Bill for the L.G.A., 1933. In view of the fact, however, as has been stated above, that this Bill was mainly a consolidating one and any contentious clause, as this would have been, would probably have resulted in its loss, nothing was done. It is hoped, however, that early and appropriate steps will be taken to amend the law in such a manner as to rectify what county councils generally feel to be an anomaly (k).

(g) In Merioneth, the county council considered it unnecessary to alter the areas of certain districts in the county, but the councils of these districts made representations to the Minister under s. 46 (5). As a result of the local inquiry which followed, the M. of H. suggested to the county council that the proposals should be reconsidered, and if the county council thought it necessary, fresh proposals be submitted. The county council appointed a new committee, which subsequently prepared supplementary proposals which were accepted by the M. of H. Other similar cases occurred.

(h) See Annual Report of M. of H. for the year 1933-34, p. 196.

(i) In Cambridgeshire, the county council framed draft proposals for the rearrangement of certain county districts, and submitted them to the district councils for their observations. On receipt of the district councils' observations, a conference was held at which the draft proposals and observations were discussed. It was not possible to arrive at agreed proposals at this conference, which was subsequently adjourned. The county council then prepared amended proposals to give effect to changes which they considered desirable. These amended proposals were not acceptable to the Minister, who in pursuance of s. 46 (5) prepared alternative proposals which he eventually confirmed. In their proposals, the county council suggested that a portion of the Chesterton rural district should be transferred to the non-county borough of Cambridge. The borough council objected on the ground that the area proposed to be transferred was not sufficiently large, and made a representation to the Minister under sub-s. (5). The Minister of Health held that a *prima facie* case had been made out for the transfer of the enlarged area. The county council argued that they had not failed to make a proposal for the extension of the borough or for the transfer of part of the rural district to the borough, and that a proposal which was different merely in degree and not in kind could not be made under sub-s. (5).

(k) Other instances where questions arose under s. 46 (5) occurred in the counties of Berks, Bucks, Carnarvon, Carmarthen, Denbigh, Glamorgan, Gloucester, Hertford, Leicester, Nottingham, Somerset, Westmorland, West Sussex, and Yorkshire (East Riding).

In East Sussex the Newhaven R.D.C. submitted a representation under the sub-section for the inclusion of a part of their district in the county borough of Brighton. The town council were willing to accept the parish of Telscombe, part of the area referred to, but the county council objected. The Minister was advised that, in the absence of agreement by the county council, he had no power to proceed under the sub-section. At the instance of the Newhaven R.D.C., a rule *nisi* was obtained calling upon the Minister to show cause why a writ of *mandamus* should not issue, directing him to take into consideration the representation of the R.D.C. The court held that the case was not one to which sect. 46 (5) of the Act of 1929 applied, and the rule was discharged (*l*). It would appear that this sub-section does not relate to a change involving a boundary alteration between a county and a neighbouring county borough, but refers only to any change in the areas of non-county boroughs, districts or parishes. Provision for the alteration of a county borough by an ordinary order of the Minister, made on the joint representation of the councils of the county and county borough, is also made by sect. 143 (2) of the Act of 1933 (*m*), but this sub-section should probably be read as extending only to a minor alteration of boundaries. [430]

#### **Position of Adjoining County Borough Councils and County Councils.**

—The councils of many county boroughs took the opportunity presented by sect. 46 of the L.G.A., 1929, to seek extensions of their areas. The power of the council of a county borough to promote a Bill in Parliament for an extension of their boundary remains unaltered, and an unopposed provisional order may be made by the Minister under sect. 140 of the L.G.A., 1933 (*n*).

The proviso to sect. 146 (1) of the L.G.A., 1933 (*o*), requires county councils, before making proposals, to consult the councils of the county boroughs adjoining the county. The Minister of Health is also to give those councils an opportunity of laying before him their views on the proposals made. As a result of the conferences which were held during the first review, in many instances, the county council's final proposals included provision for extensions of county boroughs, thereby avoiding the necessity for the promotion of individual extension Bills or provisional orders in those cases. A county borough may apparently be afforded an opportunity of putting forward their views at an inquiry, even though the county council concerned have made no proposal affecting the county borough, but unless the county council agree to add some part of the county to the county borough, the inspector cannot properly consider the question of enlarging the proposals of the county council to cover the extension of the county borough (*p*).

As regards adjoining counties, in some cases it may be found, when considering proposals for altering county districts, that the right district for local government purposes would be formed by joining areas which are in different counties. If this is so, the county councils should confer and effect any necessary alterations (*q*). The amalgamation of

(*l*) *R. v. Minister of Health, Ex parte Newhaven R.D.C.* (1933), 31 L. G. R. 372.

(*m*) 26 Statutes 383.

(*n*) *Ibid.*, 379.

(*o*) *Ibid.*, 384.

(*p*) Kent Inquiry, letter dated May 10, 1932, from M. of H., and cf. *R. v. Minister of Health, Ex parte Newhaven R.D.C.* (1933), 31 L. G. R. 372.

(*q*) Under s. 140 (1) of the L.G.A., 1933. A number of anomalous county boundaries, particularly those of Gloucester, Warwick and Worcester, were so

one county with one or more others may also require to be considered before further reviews of their individual county districts are undertaken (r). [431]

**De-urbanisation.**—The position of borough and district councils in relation to a general review has been dealt with generally above. There is, however, one further aspect requiring special consideration, namely “de-urbanisation.” It will be appreciated that any proposal to de-urbanise an urban district and to transfer its area to a rural district, presents certain financial difficulties owing to the discontinuance of the capitation grant on the urban basis to the de-urbanised area, although the amount representing the difference between the urban and rural basis automatically becomes payable to the county council. True, the responsibility for the cost of the maintenance of the unclassified roads in the area in question becomes the responsibility of the county council, but the inhabitants of the de-urbanised area in some cases find themselves faced with a heavy rate increase. This difficulty can sometimes be overcome by the county council assisting in some measure by a contribution under sect. 57 of the L.G.A., 1929 (s), and by the exercise of the Minister's discretion totally or partially to pool over the whole district the supplementary grants payable under sect. 94 of the 1929 Act (t). [432]

**Supplementary Proposals.**—In carrying out a task of the magnitude of a review of county districts, it is impossible for county councils in all cases to prepare schemes to cover their areas without the possibility of circumstances arising which create the need for some amendment of the proposals originally submitted. As has already been observed, a number of county borough councils took the opportunity of promoting private Bills for extension of their areas, and in certain counties where this course was adopted, county councils deemed it advisable to defer

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rectified under s. 54 of the L.G.A., 1888, before the first review. At the Kent Inquiry (June, 1932) it was arranged that the inquiry into the review proposals of the county council should be held concurrently with an inquiry into the representation for the extension of a non-county borough under s. 54. The inspector decided to hear first the case of the borough for a provisional order. The proposals of the county council under the review were given priority in the notice, and a R.D.C. affected objected to the variation of the order of the notice. The inspector ruled that by the terms of the notice he sat in a dual capacity, but that the order of hearing was one of convenience not of law, and that the case for the provisional order would be heard first.

(r) Under s. 140 (1) of the L.G.A., 1933. During the course of the first review the Minister informed the county councils of Cambridge, Huntingdon, the Isle of Ely, and the Soke of Peterborough, that it appeared to him that in some instances it would have been an advantage if the county councils had considered the amalgamation of their areas with those of neighbouring county councils before undertaking their review (see Annual Report of M. of H. for the year 1933-34, p. 197).

(s) An instance of this may be cited from the Northumberland county council's proposal to de-urbanise the small urban district of Rothbury, and to add it to the Rothbury rural district. Here it was found that the inhabitants of the urban area when de-urbanised would be required to find an additional rate of over 11d. in the £ (or a sum of £322) to meet the expenditure on special services. The county council, on the other hand, would receive the portion of the capitation grant (£611) previously payable to the U.D.C., but would assume responsibility for the cost of the maintenance of the unclassified roads amounting to £229, representing a net saving to the county council of £382. With the object of securing the withdrawal of the urban council's opposition to de-urbanisation and to make good the loss referred to, the county council offered, under s. 57 of the L.G.A., 1929, to make an annual grant of £300 for a period of six years. The county council have also undertaken to review the whole position at the expiration of that period.

(t) L.G. (Adjustment of Gains and Losses in County Districts) (2nd Grant Period) Regulations, 1933, S.R. & O., 1933, No. 212.

the preparation of proposals in connection with the areas likely to be affected until the exact extent of these extensions was settled. In these cases the county councils were authorised to submit supplementary proposals to the M. of H. by a provision in the extension Act. Precisely the same procedure must be adopted in connection with the submission of supplementary proposals, publication of notices in newspapers (*u*), etc., as is required in connection with the main proposals.

[438]

**Order of Minister of Health.**—After the decision of the Minister of Health (communicated by letter to the county council concerned) has been made known, the final stage of the review is reached by the Minister making the necessary order bringing the proposals into operation. Under sect. 146 (4) of the Act of 1933 (*a*), the Minister has power, after considering any representations which may have been made, to make an order giving effect to the proposals or any of them, with or without modification, or may refuse to make such an order. In practice, the draft of the order is prepared in the solicitors' department of the M. of H., and then submitted to the county council and local authorities concerned for their observations. The date of operation is usually April 1, but in some instances this has been October 1. All orders so made under the first review, and all orders except those which are provisional only (*b*) (*i.e.* those relating to non-county boroughs, and to which the town council object) under the second and subsequent reviews, have to be laid before Parliament as soon as possible after they have been made (*c*). [434]

**Survey of Position Following First General Review.**—Whilst it is not yet possible to state definitely the extent to which the review of county districts will result in the reduction of the number of local authorities, it is clear that this reduction will be substantial. Thus, for example, in Cornwall the urban and rural districts were reduced in number from 30 to 18, in Cumberland from 21 to 11, and in East Sussex from 20 to 11. In many of the counties, the number of parishes has also been largely reduced.

So far (November, 1934) twenty-one county boroughs have, by agreement with the county councils, received extensions as part of the review schemes, thereby in many instances obviating the promotion of Parliamentary Bills or provisional orders. Extensions of a number of other county boroughs are proposed by county councils in agreed proposals at present before the Minister.

By the end of December, 1934, no order had yet been made, carrying into effect the first review made by the county councils of Durham, Leicester, the Lindsey Division of Lincolnshire, Northumberland, or the West Riding of Yorkshire. But local inquiries on the proposals of all these county councils, except the last-named, had been held. The reviews made by the county councils of Cheshire, Derby, and Lancashire have not yet been wholly carried into effect, although orders dealing with parts of these counties have been made. [435]

**London.**—Neither sect. 46 of the L.G.A., 1929 (*d*), nor sect. 146 of the L.G.A., 1933 (*e*), extends to London. When metropolitan boroughs

(*u*) Surrey Inquiry, October 26, 1931.

(*a*) 26 Statutes 385.

(*b*) See L.G.A., 1933, s. 285; *ibid.*, 456.

(*c*) *Ibid.*, s. 140 (7); *ibid.*, 385.

(*d*) 10 Statutes 916. See s. 66 (3) of the Act, *ibid.*, 927.

(*e*) 26 Statutes 384.

were first constituted under the London Government Act, 1899, various adjustments of area were made. Since then, by orders made by the L.C.C. under sect. 57 of the L.G.A., 1888 (*f*), and confirmed either by the Local Government Board or the M. of H., the parishes in such of the metropolitan boroughs as contained more than one parish have been amalgamated to form one parish co-extensive with the borough.  
[436]

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(*f*) 10 Statutes 732.

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## COUNTY ROADS

*See ROADS CLASSIFICATION.*

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## COUNTY STOCK

*See STOCK.*

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## COUNTY SURVEYOR

| PAGE                            | PAGE                                  |
|---------------------------------|---------------------------------------|
| PRELIMINARY - - - - - 236       | INTEREST IN CONTRACTS - - - - - 240   |
| APPOINTMENT - - - - - 237       | SECURITY AND ACCOUNTING - - - - - 240 |
| DEPUTY COUNTY SURVEYOR - - 238  | LONDON - - - - - 240                  |
| POWERS AND DUTIES - - - - - 239 |                                       |

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*See also titles:*

|   |  |
|---|--|
| APPOINTMENT AND DISMISSAL OF<br>OFFICERS; | DUTIES AND POWERS OF OFFICERS;<br>GUARANTEE OF OFFICERS; |
| BOROUGH ENGINEER AND SURVEYOR;            | SUPERANNUATION;  |
| CORRUPTION IN OFFICE;                     | WORKS COMMITTEE.   |

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**Preliminary.**—The office of county surveyor is of considerable antiquity, being first constituted by sect. 3 of the Statute of Bridges in the reign of Henry VIII. (22 Hen. 8, c. 5) (*a*), to deal with the survey and repair of decayed bridges and adjacent roads. By sect. 1 of the Bridges Act, 1803 (*b*), the surveyor of bridges was given the same powers

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(*a*) 9 Statutes 230. Repealed in part by the L.G.A., 1933.  
(*b*) *Ibid.*, 255. Also repealed in part by the L.G.A., 1933.

as a surveyor of highways for preventing and removing all nuisances and annoyances from bridges and the roads at their ends and of getting materials for their repair. Sect. 10 of the Highways and Locomotives (Amendment) Act, 1878 (*c*), allowed quarter sessions to deal with complaints as to highways being out of repair and, if satisfied on the report of their surveyor that the highway authority of any highway area in the county had been guilty of default, the justices might make an order requiring the authority to repair, with power to have the necessary work done if the highway authority continued in default. By sect. 13 of the same statute (*d*), roads disturnpiked after December 31, 1870, became main roads, and sect. 15 empowered quarter sessions to declare any ordinary highway to be a main road. One-half of the expense of maintaining such roads was contributed by the county on the certificate of the county surveyor, thus involving his supervision and inspection, and this system continued until sect. 3 of the L.G.A., 1888 (*e*), transferred the administrative business of quarter sessions to the county council. Sect. 11 of the Act (*f*) extended the liability of the county council to the full cost of the approved maintenance and reasonable improvement of all main roads in their county.

Since 1888, the county surveyor has been appointed by the county council instead of by quarter sessions, and his duties have been greatly enlarged. Owing to the more scientific qualifications now required for the proper performance of a county surveyor's duties, he is generally a civil engineer and is often termed "the county engineer" or "the county engineer and surveyor." The invention of the motor car brought about such a development of traffic on roads as to make it requisite that the county surveyor should be a highly skilled officer, thoroughly experienced in the construction and maintenance of the bridges and highways necessary to meet the great development in numbers, weight and speed of vehicles. The constitution of the Road Board under the Development and Road Improvement Funds Acts, 1909 and 1910 (*g*), and the grants made by the Road Board in aid of works, led to the formulation of schemes for the construction of new roads and the improvement of existing roads. After the war, the M. of T. Act, 1919 (*h*), was passed and the funds available for grants were much increased both from the proceeds of additional taxation and through the phenomenal increase in the number of motor vehicles. Finally, sect. 29 of the L.G.A., 1929 (*i*), transferred the maintenance and improvement of all roads within rural districts, and of classified roads in boroughs and urban districts, to the county councils, thus adding to their duties the supervision of many thousands of miles of roads throughout the country. **【437】**

**Appointment.**—Sect. 104 of the L.G.A., 1933 (*k*), provides that every county council shall appoint a fit person to be county surveyor, and pay him such reasonable remuneration as they may determine. The section also provides that a county surveyor shall hold office during the pleasure of the county council and that he shall perform such duties as may be determined by the county council. Sect. 121 (*l*) allows the terms of the officer's appointment to include a provision that the

(*c*) 9 Statutes 170.

(*d*) *Ibid.*, 172.

(*e*) 10 Statutes 688.

(*f*) *Ibid.*, 693.

(*g*) 9 Statutes 207, 218.

(*h*) 3 Statutes 422.

(*i*) 10 Statutes 903.

(*k*) 26 Statutes 361.

(*l*) *Ibid.*, 370.

appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed ; and where an officer on June 1, 1934, held office upon terms which purported to include such a provision, the section validates the provision as from that day. The section also provides that any person holding office during the pleasure of the council shall not be affected in respect to any right or obligation to retire on attaining any specified age, or on the happening of any specified event, in pursuance of any enactment or scheme relating to superannuation allowances. See title SUPERANNUATION. [438]

A county surveyor is to some extent subject to control by the M. of T., because by sect. 17 (2) of the M. of T. Act, 1919 (*m*), where the county council receive from the Minister a grant towards the salary of the county surveyor, it may be agreed that any appointment to that office should receive the sanction of the Minister, as also the dismissal of the officer. Sect. 124 (3) of the L.G.A., 1933 (*n*), saves any such agreement. The intention of this provision is to ensure that county councils should appoint fit and proper persons to the office, and that the officer should not be capriciously dismissed. It may be said that all county councils take advantage of the grant and the Minister makes his sanction to appointment and dismissal a condition of the grant.

To obtain a list of suitable candidates from whom a selection may be made, the county council usually advertise the vacancy, and ask candidates to state their qualifications and experience. From these, a selection is made for interview by a committee or sub-committee of the council. The final selection of a candidate is usually reached by means of a series of votes, the candidate receiving the least number of votes on each occasion being eliminated, until only two candidates remain. A vote on the two last candidates determines the selection, and the result is reported to the county council for confirmation. In some instances the selection committee send up three names to the county council either with or without a recommendation in favour of one of them, and the issue is determined by the votes of the members present at the meeting of the council.

Sect. 122 of the L.G.A., 1933 (*o*), amends the law by forbidding a member of a council to be appointed by that council to a paid office, so long as he is a member of the council and for twelve months after he has ceased to be a member. The expression "member of the council" includes the chairman of the county council and the county aldermen, as well as the county councillors ; see sect. 2 (1) of the Act of 1933. [439]

**Deputy County Surveyor.**—Sect. 115 (1) of the L.G.A., 1933 (*p*), permits of the appointment of a standing deputy surveyor, to act whenever the office of surveyor is vacant, or when the surveyor for any reason is unable to act, and any deputy so appointed is given, when acting, all the functions of the holder of the chief office. Such reasonable remuneration as the council determine may be paid to the deputy. It is the practice to appoint a deputy surveyor, and he often succeeds the chief officer on a vacancy arising.

A temporary deputy may be appointed under sect. 116 of the L.G.A., 1933 (*q*), if the county surveyor is unable to act and no standing deputy has been appointed, or the standing deputy is unable to act. [440]

(*m*) 3 Statutes 435.

(*o*) *Ibid.*, 371.

(*q*) *Ibid.*, 368.

(*n*) 26 Statutes 372.

(*p*) *Ibid.*, 367.

**Powers and Duties.**—The county surveyor is the chief executive officer of the county council in relation to roads and bridges, and is called upon to perform multifarious other duties requiring executive action, in addition to those specifically assigned to him. The nature of the normal duties varies according to the size of the county and its organisation. The principal duty is always the construction and maintenance of highways and bridges; but he may also perform architectural work for the standing joint committee of the county, or he may also be required to act as architect to the mental hospitals committee and the education committee. In the early years of county councils, it was common for all this work to be performed by the county surveyor, but since the increase in the importance of highways and bridges, it has been found convenient in the larger counties to appoint special officers for architectural work. In some counties where local Acts give the county council powers of control over rivers and streams (*e.g.* Middlesex County Council Acts of 1898, 1906 and 1921, and the Surrey County Council Act, 1931) (*r*), the county surveyor is the executive officer for these purposes. Duties may also be assigned to him in connection with the licensing of buildings as theatres or cinemas.

In counties which have special Acts providing for superannuation (*e.g.* the Middlesex County Council Acts of 1921 and 1930 (*s*), and the Middlesex and Surrey (Thames Bridges, etc.) Act, 1928, the provisions of which have been consolidated in the Middlesex County Council Act, 1934 (*ss*)), or where the L.G. and other Officers' Superannuation Act, 1922 (*t*), has been adopted, a county surveyor has the same rights as other officers to superannuation. See title **SUPERANNUATION**.

As to highways and bridges, the county surveyor is responsible for the administration under the direction of the highways and bridges committee of the county council for all duties devolving on the council under various Acts relating to highways and bridges (*u*).

The county surveyor is responsible for the preparation of plans, specifications and estimates for all works to roads and bridges performed under contract, advising on tenders, supervising the execution of the work and certifying for advances on account and for final certificates on completion of contracts.

He is responsible for all work carried out by direct labour, for the engagement of labour and payment of wages, and the certification of all accounts. The detailed supervision of this work is usually executed through divisional surveyors appointed by the county council, but acting under the direction of the county surveyor. He certifies to the county council all expenditure incurred by borough and urban district councils who claim to maintain county roads, or who maintain roads under powers delegated by the county council; see sects, 33, 36 of the L.G.A., 1929 (*a*).

The annual estimate of the cost of maintenance of classified roads and of bridges for submission to the M. of T. is also prepared by the county surveyor, and he certifies the expenditure on roads, etc., for each financial year. He also prepares plans, specifications and estimates for all new

(*r*) 1898, 61 & 62 Vict. c. cl. ; 1906, 6 Edw. 7, c. clxxiv. ; 1921, 11 & 12 Geo. 5 e. xl. ; 1931, 21 & 22 Geo. 5, c. cl.

(*s*) 1921, 11 & 12 Geo. 5, c. xl. ; 1930, 20 & 21 Geo. 5, c. clxvi.

(*ss*) 1928, 18 & 19 Geo. 5, c. lxxii. ; 1934, 24 & 25 Geo. 5, c. lxxxix.

(*t*) 10 Statutes 868.

(*u*) For these, see the lists in 9 Statutes 6, 37.

(*a*) 10 Statutes 908, 911.

works on roads, and road improvements, for submission to the M. of T. on application for grants, and is responsible for the supervision of these special works and for certifying the expenditure thereon, and for making all returns to the Minister, showing the progress of the works and the corresponding expenditure.

The county surveyor advises as to the prescribing of improvement or building lines on county roads and prepares all plans and estimates required. He advises on town planning as it affects highways, either solely or in conjunction with a town planning expert.

In connection with the transfer to county councils of the duty of maintaining county roads in rural districts, Part I. of the First Schedule to the L.G.A., 1929 (b), requires the county surveyor to consult the R.D.C. when preparing his specification of private street works in a rural district under sect. 6 (2) of the Private Street Works Act, 1892 (c), if and so far as the works include sewers. The schedule also allows a county council to authorise the county surveyor to exercise on their behalf their powers under sect. 31 of the P.H.A., 1925 (d), in respect of the approval of plans as to the width of new streets in a rural district which will form main thoroughfares or means of communication between main thoroughfares. [441]

**Interest in Contracts.**—A county surveyor is subject to the provisions applying to officers generally in sect. 123 of the L.G.A., 1933 (e), which requires an officer to give notice to the council of any pecuniary interest he may have in any contract entered into by his council or any committee of the council and forbidding an officer to exact or accept any fee or reward, other than his proper remuneration. A summary of sect. 123 is given on p. 180 of Vol. II., under the title BOROUGH ENGINEER AND SURVEYOR. [442]

**Security and Accounting.**—Sects. 119 and 120 of the L.G.A., 1933 (f), which require security to be given by any officer, who is likely to be entrusted with the custody or control of money, and as to the liability of officers to render accounts, will extend to county surveyors. A summary of these provisions will be given in the titles GUARANTEE OF OFFICERS and DUTIES AND POWERS OF OFFICERS. [443]

**London.**—In London the county surveyor is known as the chief engineer and county surveyor. The sections of the L.G.A., 1933, above referred to do not apply to the L.C.C., who still appoint this officer under sect. 3 of the L.G.A., 1888 (g). See, generally, the title LONDON COUNTY COUNCIL. [444]

(b) 10 Statutes 975.

(c) 9 Statutes 196.

(d) 13 Statutes 1126.

(e) 26 Statutes 371.

(f) *Ibid.*, 369, 370.

(g) 10 Statutes 688.

## COUNTY TREASURER

*See TREASURER.*

# COUNTY VALUATION COMMITTEE

|  | PAGE |  | PAGE |
|--|------|--|------|
| CONSTITUTION - - - - -                             | 241  | RELATIONS WITH OTHER AUTHORI-                  |      |
| PROCEEDINGS - - - - -                              | 241  | TIES - - - - -                                 | 245  |
| EXPENDITURE - - - - -                              | 242  | (1) Rating Authorities - - - - -               | 245  |
| AMENDMENT OF SCHEMES - - - - -                     | 242  | (2) Assessment Committees - - - - -            | 246  |
| OBJECTIONS TO DRAFT LISTS AND<br>APPEALS - - - - - | 242  | (3) Central Valuation Com-<br>mittee - - - - - | 246  |
| APPEAL TO HIGH COURT - - - - -                     | 244  | DEFAULT IN PREPARATION OF                      |      |
| REVISION OF VALUATION LIST - - - - -               | 244  | VALUATION LIST - - - - -                       | 246  |
| DELEGATION TO OFFICERS - - - - -                   | 244  | LONDON - - - - -                               | 247  |
| FUNCTIONS OF COMMITTEE - - - - -                   | 244  |  |      |

*See also titles :*

CENTRAL VALUATION COMMITTEE ;  
COUNTY VALUER ;  
LONDON ;

LONDON, RATING IN ;  
RATES AND RATING.\*

\* Under this title will be found a list of the numerous titles on rates and rating with an account of the scope of each and the co-ordination of each with the others.

**Constitution.**—County valuation committees are established under sect. 18 of the R. & V.A., 1925 (*a*), for the purpose of promoting uniformity in the principles and practice of valuation for rating purposes. In every county there is to be a committee of the county council called the county valuation committee. The committee is appointed by the county council, and is to consist of such number of the members of the council as the council may think fit, together with a representative of the assessment committee for each assessment area comprised wholly or in part within the county, to be nominated by the assessment committee for that area.

If a joint scheme is made for the constitution of an assessment area consisting of a county borough and part of an administrative county, the county borough council may add such number of members to the county valuation committee as may be agreed upon (*b*). A county borough which has no representative on the county valuation committee will be able to take part in the conferences which that committee are empowered to hold (*c*). [445]

**Proceedings.**—By sect. 18 (4) of the Act of 1925 (*d*), the provisions of sect. 82 (1), (2) of the L.G.A., 1888 (*e*), were applied to county valuation committees, but sect. 82 was repealed, except as to joint committees appointed under sect. 81 of the Act of 1888, by the L.G.A., 1933, and the appropriate provision will be found in sect. 96 of that

(*a*) 14 Statutes 642.

(*b*) R. & V.A. (County Valuation Committees) Order, 1926 (S.R. & O., 1926, No. 1502); 14 Statutes 768.

(*c*) R. & V.A., 1925, s. 18 (2); 14 Statutes 643.

(*d*) 14 Statutes 643.

(*e*) 10 Statutes 753.

Act (*f*), which applies wherever a committee is appointed by a county council under any enactment. Under sect. 96, the county council may make, vary and revoke standing orders respecting the quorum, proceedings and place of meeting of the county valuation committee, but if no such orders are made, these will be such as the committee may determine. The person presiding at any meeting of the committee is to have a second or casting vote. Apparently the county council may direct that the acts and proceedings of the committee shall not be required to be submitted to the council for their approval. [446]

**Expenditure.**—Sect. 18 (4) of the Act of 1925 also applied sect. 80 (3) of the L.G.A., 1888 (*g*), relating to the control of expenditure by the finance committee of the county council, to the expenditure of the county valuation committee, but sect. 80 (3) is also repealed by the L.G.A., 1933, and replaced by sect. 86 of that Act (*h*).

County valuation committees are given power to appoint their own officers. Thus they may employ a valuer to give advice or assistance in connection with the valuation of any hereditaments in their area (*i*) (see title COUNTY VALUER), and they may appoint also such other officers, and pay such reasonable salaries, as they think fit (*j*).

No provision for payment of expenses of members in attending a meeting of a county valuation committee was contained in the R. & V.A., 1925. This committee is, however, a committee of the council appointed for the whole area of the county and thus the council, under sect. 294 of the L.G.A., 1933 (*k*), may defray travelling expenses of members of the committee in attending meetings or travelling to make inspections by direction of the council or committee.

County valuation committees may, however, under the R. & V.A., 1925, repay to those who are members both of the county council and the committee, any travelling and subsistence expenses reasonably incurred in attending conferences held by such committees, and expenses so incurred by such a committee are to be defrayed as expenses for general county purposes (*l*). [447]

**Amendment of Schemes.**—County councils were responsible for the submission to the M. of H. of the schemes under which assessment areas and assessment committees were constituted (*m*), and as any such scheme may be revoked or varied by a new scheme (*n*), it still remains with the county council to advise the Minister when an alteration of a scheme is found to be desirable. In any such case, the county council would act, no doubt, on the recommendation of the county valuation committee. [448]

**Objections to Draft Lists and Appeals.**—Sect. 18 (3) of the Act of 1925 (*o*) authorises the county valuation committee to appear as a party to any objection to the draft valuation list or appeal thereon, or in opposition to any objection or appeal; but if they intend to appear in opposition to an objection made by an occupier, not less than three days' notice before the date of the hearing must be given, and in the case of an appeal such longer notice as is required by the rules relating

(*f*) 26 Statutes 357.

(*g*) 10 Statutes 751.

(*h*) 26 Statutes 353.

(*i*) R. & V.A., 1925, s. 38 (1); 14 Statutes 667.

(*j*) *Ibid.*, s. 55 (1); *ibid.*, 678.

(*k*) 26 Statutes 462.

(*l*) R. & V.A., 1925, s. 53 (2); *ibid.*, 676.

(*m*) *Ibid.*, ss. 16 (2), 17 (4); *ibid.*, 640, 642.

(*n*) *Ibid.*, s. 16 (8); *ibid.*, 641.

(*o*) 14 Statutes 643.

to appeals, stating the grounds of their opposition. Sect. 3 (3) of the R. & V.A. (Assessment Appeals) Rules, 1927 (*p*), requires such a notice to be given before the expiration of fourteen days from the service of the notice of appeal on the assessment committee.

The county valuation committee may also themselves lodge an objection if aggrieved by the incorrectness or unfairness of any matter in the draft list, or otherwise with respect to the list (*q*). This power given to the county valuation committee is independent of the ordinary right to object of the occupier of a hereditament, and is no doubt specifically given to enable the committee to carry out the duty imposed upon them to promote uniformity of valuation throughout the county.

On the hearing of an objection, the county valuation committee are entitled to appear and be heard and to examine any witness before the assessment committee, and to call witnesses (*r*).

It appears to be clear that the rule (*s*) that no party to an objection shall be present while the assessment committee are considering their decision, includes a valuer of the county valuation committee. It has been held that the presence of the county valuation officer during the consideration of a decision by the assessment committee, although he did not tender any advice or assistance or take any part in their deliberation, was sufficient to invalidate the proceedings (*t*).

If the county valuation committee appear as a party to an objection before the assessment committee and are aggrieved by the decision, they may appeal to quarter sessions (*u*). It has been held that if the objector or any of the parties appear, although they do not submit evidence, they do not lose the right of appeal (*a*). The county valuation committee may also appear as a party in opposition to any appeal (*b*).

If a county valuation committee are the appellants, or have given notice to appear as respondents, to an appeal to quarter sessions, they may agree in writing with the other persons concerned to refer the matter in dispute, or any question or issue arising in it, to arbitration, or to appoint a person to value any hereditament or part of it, and to accept such valuation as binding, and to treat the costs of the valuation as part of the costs of the appeal (*c*).

If application is made to quarter sessions by any party to the appeal, either before the hearing, or at any time during the hearing before evidence of value has been adduced, the court may appoint a proper person to make a valuation (*d*). The costs of the valuation will be deemed to be costs of the appeal, but are payable in the first instance by the applicant. Except where the application is made by a county council, a county valuation committee, a rating authority or an assessment committee, the court may not order the valuation unless the applicant gives security to pay the costs. The valuation in this case is not conclusive. The court may call the valuer as a

(*p*) S.R. & O., 1927, No. 416; 14 Statutes 799.

(*q*) R. & V.A., 1925, s. 26 (1); 14 Statutes 653. For procedure on objection, see title ASSESSMENT COMMITTEES in Vol. I., p. 446.

(*r*) *Ibid.*, s. 27 (1); *ibid.*, 654. See title ASSESSMENT COMMITTEES: HEARING OF OBJECTIONS, at p. 451 of Vol. I.

(*s*) *Ibid.*, Sched. IV., Part III. (4); *ibid.*, 697.

(*t*) *R. v. N. E. Surrey A. C.* [1933] 1 K. B. 776; Digest (Supp.).

(*u*) R. & V.A., 1925, ss. 18 (3), 31 (1); 14 Statutes 643, 657.

(*a*) *R. v. Essex J.J.* (1882), 46 J. P. Jo. 724; 38 Digest 604, 1319.

(*b*) R. & V.A., 1925, s. 18 (3); 14 Statutes 643; and see *ante*, p. 242.

(*c*) *Ibid.*, s. 31 (6); *ibid.*, 658; and see title RATING APPEALS.

(*d*) *Ibid.*, s. 33; *ibid.*, 661.

witness, and if application is made by any party to the appeal, the valuer must be called, and he may be cross-examined (dd). [449]

**Appeal to High Court.**—If the county valuation committee are party to an appeal to quarter sessions and are dissatisfied with the decision of the justices as being erroneous in point of law, they may apply to have a case stated for the opinion of the High Court on the point of law, and the justices must state a case unless they are of opinion that the application is frivolous, imposing, however, such conditions as to costs as they think fit (e).

The clerk of the peace is to advise the county valuation committee of any decisions of quarter sessions on appeal, or of any award of an arbitrator or judgment of a superior court, if it has been enrolled at quarter sessions and involves an alteration of the valuation list (f). [450]

**Revision of Valuation List.**—In addition to the power given to the county valuation committees to object to the draft list, they may also make a proposal for the revision of the valuation list (g), and successive proposals may be made in respect of the same assessment (h).

The proposal will be heard and determined by the assessment committee, as if it were an objection to the draft list, and the same provisions apply to the hearing and determination of proposals as in the case of objections (i).

It is the view of the Central Valuation Committee that the county valuation committee may also object to a proposal for revision, and appear before the assessment committee in support of the objection (k). The county committee may require from assessment committees and rating authorities any information they may need, which the committee or authority are able to furnish (l). They may also obtain from surveyors of taxes, on payment, a copy of the annual values for income tax under Sched. A for their area (m). [451]

**Delegation to Officers.**—An officer of a county valuation committee may be authorised by resolution of the committee, to institute, carry on or defend any proceedings in relation to the valuation list (n). [452]

**Functions of Committee.**—The county valuation committee are constituted by the R. & V.A., 1925, for the purpose of promoting uniformity in the application of the principles and practice in valuing property for rating and of assisting rating authorities and assessment committees in the performance of their functions (o).

The rating authority and the assessment committee have the means

(dd) R. & V.A., 1925, s. 33; 14 Statutes 661.

(e) *Ibid.*, s. 31 (5); *ibid.*, 658.

(f) *Ibid.*, s. 31 (10).

(g) *Ibid.*, s. 37 (1); 14 Statutes 664.

(h) But see *R. v. W. Norfolk A. C., Ex parte Ward* (1930), 94 J. P. 201; 1 Butterworth's Rating Appeals, 1926-1931, p. 418; Digest (Supp.).

(i) R. & V.A., 1925, s. 37 (7); 14 Statutes 666. For procedure on hearing of objections, see Vol. I., title ASSESSMENT COMMITTEES.

(k) See C.V.C. Representations, amended ed., p. 77.

(l) R. & V.A., 1925, s. 40 (6); 14 Statutes 669.

(m) *Ibid.*, s. 43 (3); *ibid.*, 671.

(n) *Ibid.*, s. 31 (9); *ibid.*, 659.

(o) *Ibid.*, s. 18 (2); *ibid.*, 643.

and the power to enforce uniformity in their own area, but their authority does not extend beyond it. It is the duty of the county valuation committee to secure uniformity among rating areas and assessment areas throughout the county. The powers at their disposal have already been considered.

The method by which these objects are to be secured is left largely to the discretion of the county valuation committees. The Act of 1925 displayed marked confidence in the committees, a confidence which will be recognised by the committees, as imposing upon them a corresponding responsibility in the performance of their duties.

In assisting assessment committees, a county valuation committee may hold conferences with representatives of assessment committees, including assessment committees of county boroughs, and they may join with other county valuation committees in holding such conferences (*p*). They may also advise rating authorities and assessment committees of any conclusions arrived at or recommendations made by them at any such conference (*p*).

It is suggested by the Central Valuation Committee that the county valuation committee should also meet in conference with representatives of groups of rating authorities, with a view to ascertaining whether the gross values in the county accord with the normal actual rents and recommending a line of procedure (*q*).

County valuation committees are not authorised to issue mandatory instructions to assessment committees, but should advise and assist both them and the rating authorities in conference and otherwise (*r*). In this they resemble the Central Valuation Committee who have no executive powers. It appears, however, in the last resort, if advice and conference fail, that it is upon the powers of action given to the county valuation committee that the Act of 1925 most relies for achieving that standard of accuracy, equality and fairness in assessment, which it is its main purpose to secure.

A county valuation committee are entitled to establish a county panel of valuers to value properties throughout the county on their behalf, and to place the valuations at the disposal of rating authorities in the county free of charge (*s*). The cost may be charged to the county fund. In the Coulsdon case (*s*), the Court approved this procedure, and has expressed the opinion that no wiser or more practical course could be taken to get uniform valuations in a county (*s*). [453]

**Relations with other Authorities.** (1) *Rating Authorities.*—The R. & V.A., 1925, clearly intends that county valuation committees and rating authorities should work together in the performance of their functions as valuation authorities. Sect. 18 (2) enjoins that these committees should assist rating authorities in performing their functions, and the rating authorities on their side are to furnish the valuation committee with all the information they may require, and which they are able to furnish (*t*), including, according to the opinion

(*p*) R. & V.A., 1925, s. 18 (2); 14 Statutes 643.

(*q*) Memorandum May 30, 1931, para. (15), reprinted in amended ed. of Representations, 1934, p. 87.

(*r*) Circular 663.

(*s*) *Coulsdon and Purley U.D.C. v. Surrey C.C.* (1934), 98 J. P. 437; Digest (Supp.).

(*t*) R. & V.A., 1925, s. 40 (6); 14 Statutes 669.

of the Central Valuation Committee (*u*), copies of, or extracts from, draft valuation lists. The Central Committee also advise that it is desirable, with the view to securing economical and expeditious administration, that the county valuation committees should encourage rating authorities to consult the county valuation officer (*a*). Especially does this apply to the valuation of hereditaments situate in more than one rating area, and it is suggested that in such cases the county valuation committee should co-ordinate the rating authorities concerned, and that it may be advisable for those authorities to agree to the appointment by the county valuation committee of a valuer to act for them (*b*).

Certain powers are also given to the county valuation committees which enable them to supervise valuations made by the rating authority; thus they may object to entries in draft valuation lists (*c*), or make proposals for the amendment of the valuation list (*d*), and they have a right of appeal to quarter sessions (*e*). [454]

(2) *Assessment Committees*.—As the work of the assessment committee co-ordinates the relevant work of the rating authorities in its area, so the county valuation committee is charged with the responsibility of securing uniformity in the procedure of valuation throughout the county. The county committee are to assist assessment committees in performing their functions (*f*), and the assessment committee on their side are to supply the county committee, when required, with any information they are able to furnish, to enable the county committee to carry out their duties (*g*).

Each assessment committee is entitled to have one representative on the county valuation committee (*h*). Apart from the holding of conferences, if that committee should disagree with valuations approved by the assessment committee, they may lodge an objection or make a proposal for the amendment of the valuation list (*i*). [455]

(3) *Central Valuation Committee*.—County valuation committees are entitled to representation on the Central Valuation Committee, and may make contributions towards the expenses of the Central Committee (*k*). The Central Committee have expressed confidence that the county committees, along with the assessment committees and the rating authorities, will loyally observe the recommendations and suggestions conveyed in their resolutions, and that it is upon them that they rely, in all their work, to use their statutory powers to the utmost to promote uniformity in valuation (*l*). [456]

**Default in Preparation of Valuation List.**—If a county council satisfy the High Court that through default on the part of any authority or committee or person in complying with the R. & V.A., 1925, a

- (*u*) Resolution 30, amended ed., p. 73.
- (*a*) Resolution 31, *ibid.*, p. 73.
- (*b*) Resolution 68 (xi), *ibid.*, p. 29.
- (*c*) R. & V.A., 1925, ss. 18, 26; 14 Statutes 642, 653.
- (*d*) *Ibid.*, s. 37; *ibid.*, 664.
- (*e*) *Ibid.*, ss. 18, 31; *ibid.*, 642, 657.
- (*f*) *Ibid.*, s. 18 (2); *ibid.*, 643.
- (*g*) *Ibid.*, s. 40 (6); *ibid.*, 669; and see C.V.C. Resolution 30, amended ed., p. 73.
- (*h*) R. & V.A., 1925, s. 18 (1); 14 Statutes 642.
- (*i*) See *ante*, pp. 242, 244.
- (*k*) R. & V.A., 1925, s. 57 (1), (3); 14 Statutes 678, 679, and the C.V.C. (Construction) Scheme, 1926 (S.R. & O., 1926, No. 1019; 14 Statutes 740).
- (*l*) Resolution 30, amended ed., p. 73, and see p. 90 (21), (22), Organisation in Counties.

valuation list will not be prepared in accordance with the Act in time to come into force on the proper date, the court may appoint a person to make and approve the list at the cost of the defaulting authority, committee or person (*m*). [457]

**London.**—The provisions of the R. & V.A., 1925, as to county valuation committees, do not extend to London, but the L.C.C. exercise supervision over the making of valuation lists by each metropolitan borough council and by the Common Council of the City of London ; see title LONDON, RATING IN. [458]

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(*m*) R. & V.A., 1925, s. 39 ; 14 Statutes 668.

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## COUNTY VALUER

|                       | PAGE |                  | PAGE |
|-----------------------|------|------------------|------|
| APPOINTMENT - - - - - | 247  | DUTIES - - - - - | 248  |
| POWERS - - - - -      | 247  |                  |      |

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*See also titles : CENTRAL VALUATION COMMITTEE ; COUNTY VALUATION COMMITTEE.*

For the whole position as to London, see title LONDON, RATING IN. The titles dealing with rating are very numerous. A list of them with a description of the scope of each and the co-ordination of each with the others will be found under the title RATES AND RATING.

**Appointment.**—The county valuer is appointed under sect. 38 (1) of the R. & V.A., 1925 (*a*), which empowers the county valuation committee to employ a competent person to give advice or assistance in connection with the valuation of any hereditaments in their area.

The terms of the appointment and the conditions are in the discretion of the county valuation committee. Sect. 55 (1) of the Act (*b*) allows such committees to appoint such valuation officers and other officers as they think fit and to pay reasonable salaries. It would appear that the purpose of the special provision in sect. 38 (1) is to authorise the engagement of a valuer, it may be temporarily, for the valuation of a special property or a range of properties, on terms not involving the payment of a salary, but varying with the amount of work performed. [459]

**Powers.**—By sect. 38 of the Act, the valuer is empowered to enter on, survey and value, any hereditament in the area of the county valuation committee, which they may direct him to survey and value, but he must be authorised in writing by the county committee, and be prepared, when required, to produce such authority, signed by the clerk of the committee. He must also give notice of his intended visit, which must be at a reasonable time (*ibid.*). Any person wilfully

delaying or obstructing the valuer in the exercise of his powers is liable, on summary conviction, to a fine not exceeding £5 (*ibid.*).

A county valuer would no doubt be allowed to attend the hearing by an assessment committee of an objection to a valuation list or a proposal to amend the list, or at the hearing by quarter sessions of an appeal. But it appears that on the hearing of an objection or a proposal, the county valuer must not remain in the room while the assessment committee are considering their decision. Para. 4 of Part III. of the Fourth Schedule to the Act of 1925 (c) refers only to a valuer employed by the assessment committee, but it has been held that the presence of the county valuer, during the consideration of their decision by the assessment committee, invalidated the proceedings, although the valuer had taken no part in the deliberations (d). The county valuation committee, if they wish to do so, may by resolution authorise the county valuer to institute or to act in defence of any proceedings in relation to the valuation list (e). [460]

**Duties.**—It is the duty of the county valuation committee to take such steps as they think fit for promoting uniformity in the principles and practice of valuation and assisting rating authorities and assessment committees in the performance of their functions (f), and the county valuer assists the county committee in attaining these objects. It is on the advice of this official that the county committee will act in the main in whatever steps they may take.

The Central Valuation Committee point out that neither the rating authority nor the assessment committee has the power or machinery directly to promote uniformity beyond their own area, and any effective local action in that direction can only be taken by the county valuation committee (g). The Central Committee also advise that it is desirable that the valuation of all the special properties of any particular class should be made, in the first instance, by or under the supervision of one professional valuer over as wide an area as possible, and for that purpose recommend the appointment of a county valuer, who should not only advise the county committee, but be at the disposal of the rating authorities in the administrative county (h); and that where rating authorities find it necessary themselves to employ professional valuers for the valuation of special properties, the valuers should be required to work in close co-operation with the county valuer (i). Especially is this co-operation necessary in the valuation of hereditaments of large rateable value, or situate in more than one rating area, or where similar types are found in more than one rating area (especially industrial hereditaments), as where there is no such co-operation uniformity is unlikely. Friction and unnecessary waste of time and money must, in the absence of co-operation, ensue in settling the value to be attributed to each part of any undertaking situate in two or more rating areas (j).

For the purpose of promoting uniformity, sect. 18 (2) of the Act of 1925 (k), provides for the holding of conferences, and it is at such con-

(c) 14 Statutes 697.

(d) *R. v. N. E. Surrey Assessment Committee*, [1933] 1 K. B. 776; Digest (Supp.).

(e) R. & V.A., 1925, s. 31 (9); 14 Statutes 659.

(f) *Ibid.*, s. 18 (2); *ibid.*, 643.

(g) Memorandum on the Promotion of Uniformity in Valuation, May 30, 1931, amended ed. of Representations, p. 90.

(h) See *Coulson & Purley U.D.C. v. Surrey C.C.*, [1934] Ch. 694; Digest (Supp.).

(i) C.V.C. Resolution 28. (j) *Ibid.*, Resolution 68. (k) 14 Statutes 643.

ferences with assessment committees and rating authorities that the county valuer has, in the first instance, the most effective means of inducing them to work on common lines in the preparation of the valuation lists. The county valuer will be able to obtain all the information he needs to enable him to form an opinion as to the standard of valuation adopted by the various authorities (*l*). The Central Valuation Committee suggest, in order that the county committee may satisfy themselves as to how far uniform principles have been applied, that a comparison should be made of the gross values with the normal actual rents of groups of typical dwelling-houses and shops in each rating area within the county, and at the conferences such values should be compared and reviewed (*m*). Conferences of the kind have been held on the lines indicated (*n*), and assistance of much value has been given by the county valuers in bringing about agreement among the various authorities to adopt a uniform procedure in the valuation of many classes of property. The valuer has been able to lay before the conference information as to the practice in various parts of the county in the valuation of such properties as licensed premises, theatres, music-halls, picture palaces, public utility undertakings, day schools, mills, manufactories and other industrial premises, and in most cases a common line of action has been approved.

Recommendations of the Central Valuation Committee have been submitted and put to such conferences for formal adoption.

It is evident from the nature and extent of his duties that the county valuer will need full information as to the basis of assessment and the valuations adopted by the various authorities in the county. Only by such means can he be informed of the way the work is being done. Where he is not satisfied, he may find it necessary to visit the area concerned and, if need be, to take steps to induce the authorities to put their valuations on a more satisfactory basis. In promoting uniformity, the county valuer is able to exercise a wider power than any other officer appointed under the R. & V.A. The Central Valuation Committee have power only to make recommendations and have no executive authority. The county valuer, through the county valuation committee, may bring a more definite pressure to bear by reason of the power of the county committee, where necessary, to lodge an objection to the valuation of any hereditament in a draft valuation list or to make a proposal for the amendment of the valuation list in force (*o*). **【461】**

(*l*) Under R. & V.A., 1925, s. 40 (6); 14 Statutes 669.

(*m*) P. 89 of memorandum on Promotion of Uniformity, see *ante*, p. 248, note (g).

(*n*) E.g. in Middlesex, Surrey, Lancashire and Glamorgan.

(*o*) R. & V.A., 1925, ss. 26 (1), 37 (1); 14 Statutes 653, 664.

## COURT HOUSE

*See OFFICIAL BUILDINGS.*

## COURTS AND PASSAGES

*See REPAIR OF ROADS.*

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## COURTS, APPEALS TO THE

*See APPEALS TO THE COURTS.*

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## COWKEEPERS AND COWSHEDS

*See MILK AND DAIRIES.*

---

## COWS

*See DISEASES OF ANIMALS and MILK AND DAIRIES.*

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# CREAM

|                          | PAGE  |                  | PAGE  |
|--------------------------|-------|------------------|-------|
| INTRODUCTION - - - -     | - 251 | OFFENCES - - - - | - 252 |
| OBLIGATIONS ON PURVEYORS | - 251 |                  |       |

| <i>For Administrative Authorities</i>                             | - | - | - | - | - | See title | <i>FOOD AND DRUGS AUTHORITIES.</i>   |
|---|---|---|---|---|---|-----------|--------------------------------------|
| <i>Artificial or Reconstituted Cream</i> -                        | - | - | - | - | - | ,,        | <i>ARTIFICIAL CREAM.</i>             |
| <i>Decomposed and Unsound Cream</i> -                             | - | - | - | - | - | ,,        | <i>UNSAFE FOOD.</i>                  |
| <i>Procedure in cases of Adulteration</i> -                       | - | - | - | - | - | ,,        | <i>FOOD AND DRUGS.</i>               |
| <i>Provisions as to Registration and Supervision of Dairies</i> - | - | - | - | - | - | ,,        | <i>MILK AND DAIRIES.</i>             |
| <i>Sampling Officers</i> -  | - | - | - | - | - | ,,        | <i>INSPECTORS OF FOOD AND DRUGS.</i> |

**Introduction.**—Those engaged in the cream trade must comply with all applicable requirements of the Food and Drugs (Adulteration) Act, 1928 (*a*), the Artificial Cream Act, 1929 (*b*), and the Regulations made under the Public Health Acts with reference to preservatives, thickening substances, and artificial colouring matters (*c*). These provisions are to be enforced by Food and Drugs Authorities (*d*). [462]

**Obligations on Purveyors.**—The name “cream” may only be applied to “that portion of natural milk rich in milk fat which has been separated by skimming or otherwise” (*e*). Subject to the above, genuine cream may contain percentages of milk-fat varying from 50 per cent. (or more) to 25 per cent. (or less), as the Minister of Agriculture and Fisheries has refrained from exercising his power (*f*) to make regulations as to the composition of cream. Clotted cream is, or should be, pure cream ; it is not regarded as a separate article.

Vendors of cream must apparently register themselves and their premises with the local sanitary authority in accordance with the provisions applying to vendors of milk, since milk, when used in the Milk and Dairies (Consolidation) Act, 1915, includes cream (*g*). Similarly, all the provisions of that Act, and of the Order made thereunder (*h*) which regulate dairies and the handling of milk must be

(*a*) 8 Statutes 884.

(*b*) *Ibid.*, 908.

(*c*) Public Health (Preservatives, etc., in Food) Regulations (S.R. & O., 1925, No. 775 ; 1926, No. 1557 ; 1927, No. 577).

(*d*) Defined in s. 13 of the Act of 1928 (8 Statutes 893) as the Common Council of the City of London, the metropolitan borough councils, county borough councils, borough councils where the borough has a separate police establishment or had at the census of 1881 a population not less than 10,000, and had on August 13, 1888, and for the time being has, a separate court of quarter sessions, and elsewhere county councils.

(*e*) Artificial Cream Act, 1929, s. 6 ; 8 Statutes 910.

(*f*) Food and Drugs (Adulteration) Act, 1928, s. 7 ; *ibid.*, 889.

(*g*) See s. 19 ; *ibid.*, 874.

(*h*) Milk and Dairies Order, 1926 (S.R. & O., 1926, No. 821).

observed by those who handle cream, unless the application of a particular provision to a vendor of cream is negatived by its terms. [463]

**Offences.**—To sell adulterated cream is an offence against sect. 2 of the Act of 1928 ; but under sect. 1 of the Artificial Cream Act, 1929 (*i*), an offence is committed not only by selling, but also by offering or exposing for sale, under the designation of cream any article which does not comply with the definition given in the preceding paragraph. The maximum penalty for a first offence, however, is only £5 under the Act of 1929, whereas it may be as much as £20 under the Act of 1928 (*k*). It has been held that sect. 1 of the Act of 1929 applies to artificial cream sold as a separate article of food, and not to composite articles such as cream buns or cream sandwiches (*l*). It is doubtful, however, whether the same principle would apply under sect. 2 of the Act of 1928.

There are on the market substitutes for cream, sold under trade marks or other proprietary designations, which contain vegetable oils. It would be an offence to sell such articles as "cream" without adequate disclosure of the fact that they are not genuine.

The Public Health (Preservatives, etc., in Food) Regulations (*m*) make it unlawful to sell cream containing any preservative, or any of the forbidden colouring materials, or any thickening substance. The last-mentioned expression means "sucrate of lime, gelatine, starch paste or any other substance which, when added to cream, is capable of increasing its viscosity, but does not include cane or beet sugar." An offence against these Regulations may be dealt with either by a prosecution under sect. 1 (3) of the P.H.A., 1896 (*n*) (for wilfully neglecting to obey the Regulations), or by proceedings under sect. 1 or sect. 2 of the Food and Drugs (Adulteration) Act, 1928 (*o*). The importation of adulterated or impoverished cream is forbidden, unless the packages or cans are conspicuously marked in such a way as to indicate that the cream has been so treated (*p*). This provision is to be enforced by the Commissioners of Customs and Excise. [464]

The sale or deposit for sale, of unsound or decomposed cream, should be dealt with by the local sanitary authority under sect. 116 of the P.H.A., 1875 (*q*), or sect. 47 of the P.H. (London) Act, 1891 (*r*), as the case may be. [465]

(*i*) 8 Statutes 908.

(*k*) See s. 27; *ibid.* 900.

(*l*) *J. Lyons & Co., Ltd. v. Keating*, [1931] 2 K. B. 535 ; Digest (Supp.).

(*m*) See note (*c*), *ante*.

(*n*) 13 Statutes 872.

(*o*) 8 Statutes 884.

(*p*) S. 12 ; 8 Statutes 891.

(*q*) 13 Statutes 672.

(*r*) 11 Statutes 1054.

## CREATION OF CITIES

| HISTORICAL | PAGE<br>253 | PRESENT POSITION | PAGE<br>253 |
|------------|-------------|------------------|-------------|
|------------|-------------|------------------|-------------|

*See also titles : CHARTERS OF INCORPORATION ;  
COUNTY OF A CITY OR TOWN.*

**Historical.**—This title should be read in conjunction with that of COUNTY OF A CITY OR TOWN, as the two subjects are closely related in many ways. In that title it is pointed out that the commonly accepted explanation of the origin of a city, viz. that a city is a town incorporated which is or has been the see of a bishop, has, for various reasons, been doubted by writers of repute. A more probable explanation appears to be that some of the burghs built by the Saxons stood on the site of an old Roman town, and that in such instances the designation *Civitas* was continued. Hence, as Brady, quoted in COUNTY OF A CITY OR TOWN, appears to think, there was little or no difference between a city and a borough, and both terms were sometimes applied to the same town. This theory is strengthened by the case of Ripon given below.

Thus, while it is true that at the present time most cities are among the larger and more important towns, this does not necessarily follow, and a charter of incorporation for the city of Ely has not been traced, though Ely is said to have been a borough by prescription as early as the reign of William I. In the first charter granted to London by William I. the inhabitants are referred to as "burgesses," though London was known as a city before that time. The Municipal Corpsn. Act, 1835 (*a*), made no reference to any difference between a city and a borough, and the preamble read "whereas divers Bodies Corporate at sundry times have been constituted within the cities, towns and boroughs" . . .

At Ripon, there appears to have been some uncertainty, for one of the purposes for which a local Gas Act of 1865 (*b*) was passed, was according to its title "to preclude questions as to the stile of the city and burgh and the name of the Corporation." By sect. 54, from and after a certain date the city or borough or place corporate of Ripon was for all purposes to be called the City of Ripon. [466]

**Present Position.**—Among the counties of cities mentioned in sect. 61 of the Municipal Corpsns. Act, 1835, which were constituted county boroughs by sect. 34 of the L.G.A., 1888 (*c*), Lichfield only was not made a county borough.

It has been customary for the Crown to bestow on certain boroughs the right of being called cities, either by Royal Charter or Letters Patent.

(*a*) Repealed by the Municipal Corpsns. Act, 1882 ; 10 Statutes 576 *et seq.*

(*b*) 28 & 29 Vict. c. lxxvi.

(*c*) 10 Statutes 711. For a list of such cities, see *ante*, p. 195.

At the present day the title of city is usually granted by Letters Patent, and if a borough wishes to receive this honour, a petition must be addressed to the King through the Home Secretary, who submits it to His Majesty, with advice as to the reply to be returned. It is a well-established fact that the grant of such a title is only recommended in the case of towns of the first rank in population, size and importance, and having a distinct character of their own. The Record is kept in the Patent Roll of the Record Office.

In the First Schedule to the L.G.A., 1933 (*d*), no indication is given in the lists of either county or non-county boroughs of whether a particular borough is a city or not, and the only reference to this possibility is in sect. 17 (1) of the Act (*e*), which provides that the municipal corpns. of a city with a lord mayor is to be called "the lord mayor, aldermen and citizens," the municipal corpns. of a city with a mayor is to bear the title of "the mayor, aldermen and citizens," and the municipal corpns. of a borough to be called "the mayor, aldermen and burgesses." The necessity of referring in an Act of Parliament to cities as well as boroughs is obviated by sect. 15 (1) of the Interpretation Act, 1889 (*f*), which enacts that in every Act passed after January 1, 1890, any reference to the mayor, aldermen and burgesses of a borough shall include a reference to the mayor, aldermen and citizens of a city. By sect. 15 (4), the expression "borough," when used in relation to local government, means a municipal borough, which is also defined in sub-sect. (1) as any place for the time being subject to the Municipal Corpsns. Act, 1882, and includes, therefore, a city to which the Act of 1882 applies.

A city may be either a county borough or a non-county borough.

**[467]**

(*d*) 26 Statutes 471.

(*e*) *Ibid.*, 313.

(*f*) 18 Statutes 999.

## CREMATION

|                                 | PAGE |                                | PAGE |
|---------------------------------|------|--------------------------------|------|
| INTRODUCTORY - - -              | 254  | REGISTRATION OF CREMATIONS - - | 259  |
| PROVISION OF CREMATORIA - - -   | 255  | PENALTIES - - - - -            | 260  |
| REGULATIONS - - -               | 256  | FEES - - - - -                 | 261  |
| SAFEGUARDS IN REGULATIONS - - - | 256  | INCUMBENTS - - - - -           | 261  |
| DUTIES OF MEDICAL REFEREE - - - | 257  | CORONERS - - - - -             | 261  |
| STILLBORN CHILDREN - - -        | 259  | LONDON - - - - -               | 261  |
| DISPOSITION OF ASHES - - -      | 259  |                                |      |

*See also titles : BURIAL AND CREMATION ;  
BURIAL AUTHORITIES ;  
BURIALS AND BURIAL GROUNDS.*

**Introductory.**—By sect. 4 of the Cremation Act, 1902 (*a*), the powers of a burial authority to provide and maintain burial grounds or cemeteries or anything essential, ancillary or incidental thereto were extended to include the provision and maintenance of crematoria.

The powers are conferred by the Act only on the following (b) : (1) any burial board ; (2) any council, committee or other local authority having the powers and duties of a burial board (c) ; and (3) any local authority maintaining a cemetery under the P.H. (Interments) Act, 1879 (d), or under any local Act. Powers are not therefore conferred by this Act on a cemetery company.

The circumstances which led to the passing of the Act are mentioned in the title BURIAL AND CREMATION, at p. 313 of Vol. II.

In sect. 2 of the Act (e), a crematorium is defined as "any building fitted with appliances for the purpose of burning human remains," and as including everything incidental or ancillary thereto.

Most of the provisions of the Act of 1902 relate to crematoria, but sect. 7 of the Act (f), authorising the Home Secretary to make regulations, allows these to prescribe in what cases and under what conditions the burning of any human remains may take place; and sect. 3 of the Regulations of 1930 (g) forbids a cremation of human remains to take place except in a crematorium of the opening of which notice has been given to the Secretary of State. [468]

**Provision of Crematoria.**—Both a burial ground under the Burial Acts and a cemetery under the P.H. (Interments) Act, 1879 (h), need not be situate within the area for which the authority act, and a crematorium may, therefore, be provided outside the authority's area.

No human remains may be burned in a crematorium provided under the Act of 1902, until the plans and site have been approved by the M. of H., and until the crematorium has been certified by the burial authority to the Secretary of State to be complete, built in accordance with the plans, and properly equipped for the purpose of the disposal of human remains by burning (i).

No crematorium may be constructed nearer to any dwelling-house than 200 yards, except with the consent, in writing, of the owner, lessee and occupier of such house, nor within 50 yards of any public highway, nor in the consecrated part of the burial ground of any burial authority (k). On the very similar language of sect. 9 of the Burial Act, 1855 (l), it was held that the term "dwelling-house" does not include the curtilage, and that the distance was to be measured from the walls of the dwelling-house (m). [469]

A burial authority may accept a donation of land for the purpose of a crematorium, and a donation of money or other property for enabling them to acquire, construct or maintain a crematorium (n).

(b) See definition of "burial authority" in s. 2 ; 2 Statutes 281.

(c) As far as this branch of the definition goes, therefore, the Burial Acts, 1852-1906, must be in force in the area before the council can provide a crematorium.

(d) 13 Statutes 796.

(e) 2 Statutes 281.

(f) *Ibid.*, 282.

(g) S.R. & O., 1930, No. 1016 ; 23 Statutes 15.

(h) See s. 25 of the Burial Act, 1852 ; 2 Statutes 198 ; and s. 2 (2) of the Act of 1879 ; 13 Statutes 796.

(i) Act of 1902, s. 4 ; 2 Statutes 282.

(k) *Ibid.*, s. 5 ; *ibid.*

(l) 2 Statutes 221.

(m) *Wright v. Wallasey Local Board* (1887), 18 Q. B. D. 783 ; 7 Digest 549, 273.

(n) Cremation Act, 1902, s. 6 ; 2 Statutes 282. See also L.G.A., 1933, s. 268 ; 26 Statutes 449.

**Regulations.**—As respects crematoria, the regulations under sect. 7 of the Cremation Act, 1902 (*o*), must deal with the maintenance and inspection of crematoria, prescribe in what cases and under what conditions the burning of human remains may take place, and direct the disposition or interment of the ashes, and prescribe the forms of the notices, certificates and statutory declarations to be given or made before any such burning is permitted, and also regulate the registration of such burnings.

These powers are extended by sect. 10 of the Births and Deaths Registration Act, 1926 (*p*), so as to include power to make regulations for the purpose of applying the provisions of that Act to cases of cremation.

The regulations now in force were made by the Home Secretary on October 28, 1930 (*q*), and prescribe the safeguards governing the practice of cremation.

It must be noticed that the regulations apply not only to crematoria established under the Act of 1902 by burial authorities, but also to a crematorium established by any company or person; see the definition of "cremation authority" in the regulations.

Every crematorium is to be maintained in good working order, provided with a sufficient number of attendants, and kept constantly in a cleanly and orderly condition; but a crematorium may be closed by order of the cremation authority after notice has been given by advertisement and otherwise (*r*).

The cremation authority must give a written notice to the Secretary of State of the opening or closing of any crematorium (*s*).

Every crematorium must be open to inspection at any reasonable time by any person appointed for that purpose by the Secretary of State or by the M. of H. (*t*).

The Secretary of State must appoint a medical referee and a deputy medical referee to every cremation authority, on their nomination, who must be registered medical practitioners of not less than five years' standing and qualified to discharge the duties required of them (*u*). If otherwise qualified, a coroner or a M.O.H. may be appointed. The deputy is to act in the absence of his principal, or if the latter has been the medical attendant of the deceased person. [470]

**Safeguards in Regulations.**—The following are the general conditions to be observed at cremations :

- (1) The cremation must take place in a crematorium of the opening of which notice has been given to the Secretary of State (*a*).
- (2) The cremation of the remains of any person who is known to have left a written direction to the contrary, or whose remains have not been identified, is unlawful (*b*).

(*o*) 2 Statutes 282.

(*p*) 15 Statutes 772.

(*q*) S.R. & O., 1930, No. 1016; 23 Statutes 15.

(*r*) Reg. 1; 23 Statutes 15.

(*s*) *Ibid.*

(*t*) Reg. 2.

(*u*) Reg. 10.

(*a*) Reg. 3; 23 Statutes 16.

(*b*) Regs. 4, 5. On the other hand, a direction to cremate contained in a Will cannot be enforced; *Williams v. Williams* (1882), 20 Ch. D. 659; 7 Digest 563, 379.

- (3) The death must have been duly registered, except where an inquest has been held or a post-mortem examination has been made, and a certificate in the prescribed form has been given by a coroner (*c*), or a certificate has been given that registration of the death in England is not necessary (*d*).
- (4) An application for cremation must be made, and the particulars in it confirmed by a statutory declaration (*e*).
- (5) Medical certificates by two registered medical practitioners must be produced, one of whom attended the deceased during his last illness and is able to certify definitely as to the cause of death, and the other is able to confirm the particulars given in the first certificate; unless a certificate of a post-mortem examination, or a coroner's certificate after an inquest is produced (*f*).
- (6) A written authority must be given by the medical referee (*g*) for the cremation.

The application referred to in para. (4) above must be signed and the statutory declaration made by an executor or by the nearest surviving relative of the deceased, or, if made by any other person, must show a satisfactory reason why the application is not made by an executor or such a relative (*h*).

A certificate of a post-mortem examination referred to in para. (5) above must have been given by a medical practitioner expert in pathology, appointed by the cremation authority (or in case of emergency appointed by the medical referee), or the examination must have been made under sect. 21 of the Coroners (Amendment) Act, 1926 (*i*), and the cause of death certified by the coroner (*k*).

As regards a coroner's certificate, if the death occurred in connection with an industrial, railway, flying or road accident and the coroner adjourns the inquest with a view to the investigation of the causes of the accident, he may give a certificate if he is satisfied that the death was due to an accident, without waiting for the termination of the inquest.

The confirmatory medical certificate referred to in para. (5) above, if not given by the medical referee, must be given by a registered medical practitioner of not less than 5 years' standing, who is not a relative of the deceased or a relative or partner of the doctor who has given the first medical certificate (*l*).

The medical referee, or his deputy, if he has personally investigated the cause of death may give the confirmatory certificate, and if he has made a post-mortem examination he may give a certificate of its result (*m*). The medical referee, if a coroner, may himself give the coroner's certificate as to the result of the inquest. [471]

**Duties of Medical Referee.**—The effect of Reg. 12 is to impose on the medical referee the duty of securing that all the safeguards imposed by the Regulations have been observed before he gives his certificate

(*c*) Reg. 6; Coroners (Amendment) Act, 1926, s. 21 (1); 3 Statutes 790.

(*d*) Reg. 6; Births and Deaths Registration Act, 1926, s. 2 (2); 15 Statutes

768.

(*e*) Reg. 7; 23 Statutes 16.

(*f*) Reg. 8; *Ibid.*, 16.

(*g*) Defined as including a deputy medical referee; see definitions.

(*h*) Reg. 7, Schedule, Form A; 23 Statutes 16, 20.

(*i*) 2 Statutes 790.

(*k*) Reg. 8; 23 Statutes 16.

(*l*) Reg. 9; 23 Statutes 17.

(*m*) Reg. 11.

for the cremation. In particular he must examine the application and certificates and ascertain that they are such as are required by the Regulations, and that the inquiry made by the persons giving the certificates has been adequate, and he may make any other inquiry which he may think necessary (*n*).

The medical referee must not allow the cremation unless he is satisfied that the fact and cause of death have been definitely ascertained, and in particular, if the cause of death assigned in the medical certificates be such as—regard being had to all the circumstances—might be due to poison, to violence, to any illegal operation, or to privation or neglect, he must require a post-mortem examination to be held, and if that fails to reveal the cause of death must decline to allow the cremation unless an inquest be held and a certificate given by the coroner (*o*). If it appears that death was due to poison, to violence, to any illegal operation or to privation or neglect, or if there is any suspicious circumstance whatsoever, whether revealed in the certificates or otherwise coming to the knowledge of the medical referee, he must decline to allow the cremation unless an inquest be held and a certificate given by the coroner (*p*).

The Secretary of State may, however, authorise the medical referee, in special circumstances, to allow cremation without an inquest (*q*).

If a coroner has given notice that he intends to hold an inquest on the body, the medical referee must not allow the cremation to take place until the inquest has been held (*r*). Further, the medical referee may in any case decline to allow the cremation without stating any reason (*s*).

Where a person has died in any place out of England and Wales, the medical referee may accept an application with a declaration containing the particulars in Form A in the Schedule to the Regulations, if it be made before any person having authority in that place to administer an oath or to take a declaration; and he may accept certificates signed by medical practitioners who are shown to his satisfaction to possess qualifications substantially equivalent to those prescribed in the case of each certificate by the Regulations (*t*). [472]

If a deceased person has been buried for not less than a year, the remains may be cremated with such conditions as the Secretary of State may impose in the exhumation licence, and a contravention of the conditions of the licence is deemed to be a contravention of the Regulations (*u*).

If a person dies of plague, cholera or yellow fever on board ship or in a hospital provided under the P.H.As., or the Isolation Hospital Acts, the medical referee, if satisfied as to the cause of death, may dispense with any of the requirements of Regs. 4-9 or 12 (*x*).

The Regulations may also be temporarily suspended or modified in any district during an epidemic or for other sufficient reason by an order of the Secretary of State made on the application of a local authority (*x*). [473]

(*n*) Reg. 12 (3); 23 Statutes 17.

(*o*) Reg. 12 (5); 23 Statutes 18.

(*p*) Reg. 12 (6).

(*q*) *Ibid.*

(*r*) Reg. 12 (7).

(*s*) Reg. 12 (8).

(*t*) Reg. 12, last paragraph but one; 23 Statutes 18.

(*u*) Reg. 13; 23 Statutes 18. As to an exhumation licence, see Burial Act, 1857, s. 25; 2 Statutes 236. A faculty will not be granted by the Ordinary for the removal of remains from consecrated ground for the purpose of cremation; *Re Dixon*, [1892] P. 386; 7 Digest 561, 369.

(*x*) Reg. 14; 23 Statutes 19.

**Stillborn Children.**—Under Reg. 15 (a), the medical referee may, without further formalities, permit the cremation of the remains of a stillborn child, if it be certified to be stillborn by a registered medical practitioner after examination of the body, and if the referee, after such inquiries as he may think necessary, is satisfied that it was stillborn and that there is no reason for further examination.

The medical referee must, however, except where an inquest has been held and the appropriate certificate given by a coroner, require the production of a certificate or a duplicate of a certificate that the stillbirth has been duly registered (*ibid.*). [474]

**Disposition of Ashes.**—The provisions of the Regulations of 1930, as to the disposal of the ashes, are set out in the title BURIALS AND BURIAL GROUNDS, on pp. 348, 349 of Vol. II. As stated on p. 349, the burial of cremated ashes in a church in which burials have been ordered to be discontinued is not prohibited (b).

Cremated ashes may be interred without a faculty in a churchyard although it has been closed or has never been used for burials, or they may under faculty be deposited in a casket or urn in the floor or wall of a church provided the fabric of the church is not endangered (c). [475]

**Registration of Cremations.**—The cremation authority must appoint a registrar to keep a register of the cremations carried out by them, and the form of the register is prescribed by the regulations (d). Entries are to be made relating to each cremation immediately after the cremation, with a final entry as to the method of the disposal of the ashes which is to be made as soon as the remains have been handed to relatives or otherwise disposed of. The registrar of cremations must, within ninety-six hours of a cremation, send to the registrar of births and deaths for the sub-district in which the death took place, or, if the death took place elsewhere than in England and Wales, to the registrar of births and deaths for the sub-district in which the crematorium is situated, a notification of the cremation and of the date and place thereof (e). Where the body has been cremated without inquest, the notification is to be made upon the portion provided for the purpose of the certificate issued by the registrar of births and deaths (f).

Where the body has been cremated after inquest or post-mortem made in pursuance of the Coroners (Amendment) Act, 1926 (g), the notification is to be sent upon the detachable portion of the certificate given by the coroner.

Where the human remains of a person dying of plague, cholera or yellow fever (see *ante*, p. 258), have been cremated, the registrar of cremations must within ninety-six hours forward to the Registrar-General a copy of the entry in the register of cremations together with particulars of the place of death of deceased and of the cause of death (h). This provision is, however, subject to any order made by the Secretary

(a) 23 Statutes 19.

(b) See also *Re Kerr*, [1894] P. 284; 7 Digest 563, 384.

(c) *Re Haigh with Aspull New Parish*, [1919] P. 143; 7 Digest 539, 197.

(d) Reg. 17; 23 Statutes 19.

(e) Reg. 19.

(f) Registration (Births, etc.) Consolidated Regulations, 1927, Reg. 87 (1); S.R. & O., 1927, No. 485; 15 Statutes 801.

(g) S. 21 (1); 3 Statutes 790.

(h) Reg. 19 (3); 23 Statutes 20.

of State temporarily suspending or modifying the regulations in any district during an epidemic or for other sufficient reason.

The regulations with regard to registration of cremations do not apply to the cremation of remains which have already been buried and are exhumed for the purpose of cremation (*i*).

On the closing of a crematorium all registers and documents relating to cremations therein are to be sent to the Secretary of State or otherwise disposed of as he may direct (*k*).

Applications, certificates, statutory declarations and other documents relating to any cremation must be marked with a number corresponding to the number in the register (*l*). The cremation authority must file and preserve all such documents, but may destroy the same (other than the register of cremations) after the expiration of fifteen years from the date of the cremation to which they relate.

Registers and documents must be open to inspection at any reasonable time by any person appointed for that purpose by the Secretary of State, the M. of H. or the chief officer of any police force (*m*).

All statutory provisions relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in courts and otherwise apply to the register of burnings directed to be kept by the regulations, and the Stamp Act, 1891, applies to a register of cremations as if it were a register of burials (*n*).  
[476]

**Penalties.**—Sect. 8 of the Cremation Act, 1902 (*o*), imposes penalties for breaches of the regulations made under the Act, and the penalties imposed by the section are in addition to any liability or penalty which may otherwise be incurred. The contravention of a regulation entails a liability on summary conviction to a penalty not exceeding £50, subject, however, to a right of appeal against a conviction to quarter sessions.

The wilful making of any false representation or signature or the uttering of any false certificate with a view to procuring the burning of any human remains renders the offender liable to imprisonment with or without hard labour for not exceeding two years (*p*).

Any person who with intent to conceal the commission or impede the prosecution of any offence procures or attempts to procure the cremation of a body, or with such intent makes any declaration or gives any certificate under the Act, he is liable on conviction on indictment to penal servitude for a term not exceeding five years (*q*).

These provisions relate to cremation, *i.e.* the burning of a body in a crematorium, and the procuring of a burning elsewhere than in a crematorium is not an offence under sect. 8 (3) of the Act (*r*). [477]

(*i*) Reg. 19 (2); 23 Statutes 20.

(*k*) Reg. 21.

(*l*) Reg. 20.

(*m*) *Ibid.*

(*n*) Cremation Act, 1902, s. 7; 2 Statutes 282; Burial Act, 1857, s. 15; 2 Statutes 233; Forgery Act, 1861, ss. 36, 37; 4 Statutes 585 (both as amended by the Forgery Act, 1913; 4 Statutes 787); Stamp Act, 1891, ss. 1, 64, Sched. I.; 16 Statutes 618, 637, 656.

(*o*) 2 Statutes 283. See also s. 1 of the Summary Jurisdiction (Appeals) Act, 1933; 26 Statutes 546.

(*p*) Act of 1902, s. 8 (2); 2 Statutes 283.

(*q*) *Ibid.*, s. 8 (3).

(*r*) *R. v. Byers* (1907), 71 J. P. 205; 7 Digest 563, 382. This decision is not affected by Reg. 3 of the 1930 Regulations, since that decision was only concerned with offences under s. 8 (3) of the Act of 1902, while Reg. 3 only defines an offence punishable under s. 8 (1) of that Act.

**Fees.**—A burial authority may demand such charges or fees for the burning of human remains in their crematorium as may be authorised by a table approved by the M. of H., and these charges or fees, together with any other expenses properly incurred in connection with a cremation, are to be deemed part of the funeral expenses (*s*). In any table of fees respecting burials to be made or approved by the Secretary of State, a fee may be fixed in respect of a burial service before, at, or after cremation, and if no fee is fixed, the fee, if any, fixed in respect of a burial service will apply (*t*).

Many cremation authorities have arranged with the Cremation Society, 23 Nottingham Place, London, W.1, to accept payment of the charge for cremation of deceased members of the society from the treasurer of the society.

Sect. 13 of the Cremation Act, 1902 (*u*), applies sects. 52, 57 of the Cemeteries Clauses Act, 1847 (*a*), to the disposition or interment of the ashes of a cremated body. These sections provide for payments to incumbents and parish clerks of parishes from which bodies are removed of such sums as may be prescribed in the special Act, and as no such sum is indicated in the P.H. (Interments) Act, 1879 (*b*), these sections have no application to cemeteries established by burial authorities under the Act of 1879. [478]

**Incumbents.**—The incumbent of an ecclesiastical parish is not under any obligation to perform a funeral service before, at or after the cremation of the remains of a parishioner or person dying in his parish, but, if he refuses so to do, any clerk in Holy Orders not prohibited under ecclesiastical censure may, with the permission of the Bishop and at the request of the executor of the deceased person or of the burial authority or other person having charge of the cremation or interment of the cremated remains, perform such service (*c*). [479]

**Coroners.**—Nothing in the Cremation Act, 1902, is to interfere with the jurisdiction of any coroner under the Coroners Act, 1887, or any amending Act (*d*), such as the Coroners (Amendment) Act, 1926 (*e*). [480]

**London.**—The common council of the City of London and the councils of those metropolitan boroughs in which the Burial Acts, 1852–1906, are in force are burial authorities within the meaning of the Cremation Act, 1902, and could provide a crematorium under sect. 4 of that Act. The common council has a crematorium at Little Ilford, but no metropolitan borough council has yet provided one. There are also crematoria at Golders Green, Woking and West Norwood, provided by companies under powers conferred by private Acts. [481]

(*s*) Act of 1902, s. 9; 2 Statutes 283.

(*t*) *Ibid.*, s. 12; Burial Act, 1900, s. 3; 2 Statutes 284, 249.

(*u*) 2 Statutes 284.

(*a*) *Ibid.*, 266, 267.

(*b*) 13 Statutes 796.

(*c*) Act of 1902, s. 11; 2 Statutes 284.

(*d*) *Ibid.*, s. 10; *ibid.*

(*e*) 3 Statutes 780.

## CRIMINAL CASES, COSTS IN

*See COSTS IN CRIMINAL CASES.*

## CRIMINAL LIABILITY OF LOCAL AUTHORITIES

|   | PAGE |
|---|------|
| LOCAL AUTHORITIES AS "CORPORATIONS" - - - - - | 262  |
| CORPORATIONS AS "PERSONS" - - - - -           | 263  |
| PROCEDURE - - - - -                           | 265  |

*See also titles : ACTIONS BY AND AGAINST LOCAL AUTHORITIES ;  
NUISANCES ;  
OFFICERS OF LOCAL AUTHORITIES.*

**Local Authorities as "Corporations."**—In a municipal borough, the Royal Charter by which the borough was created constitutes the mayor, aldermen and burgesses of the borough, the municipal corp., and the council of the borough exercise all such functions as are vested in the municipal corp. of the borough (a). But this plan is not adopted as respects county councils, district councils and parish councils, and these councils were all made bodies corporate by virtue of various Acts of Parliament, which have now been replaced by the L.G.A., 1933. By sect. 2 (2) of that Act (b), "the county council shall be a body corporate," and by sects. 31 (2), 32 (2) and 48 (2) of the Act (c), urban district councils, rural district councils and parish councils are constituted corporate bodies. In a rural parish not having a separate parish council, by sect. 47 (3) of the Act (d) the chairman of the parish meeting and the councillor or councillors for the time being representing the parish on the R.D.C. are to be a body corporate by the name of "the representative body" of the parish. [482]

By sect. 276 of the L.G.A., 1933 (e), county councils and borough, district and parish councils, are empowered to defend any legal proceedings where they deem it expedient for the promotion or protection of the interests of the inhabitants of their area. They thus have liabilities and rights in the defence of the body corporate similar to those of other corps. with, in addition, this statutory power. By sect. 277 of the same Act (f), any of the councils already mentioned may authorise by resolution any of their members or officers, either generally or in respect of any particular matter, to institute or defend proceedings on their behalf before a court of summary jurisdiction, or to appear on their behalf before a court of summary jurisdiction in any proceedings instituted against them, and any member or officer so authorised is entitled to defend any such proceedings. This authority must be given before the commencement of the proceedings (g). By sect. 278 of the same Act (h), in any proceedings instituted against such a council,

(a) See L.G.A., 1933, ss. 17 (1), (2), 129 ; 26 Statutes 313, 374. The expression "functions" is not defined in the Act.

(b) 26 Statutes 307.

(c) *Ibid.*, 320, 329.

(e) *Ibid.*, 452.

(d) *Ibid.*, 329.

(f) *Ibid.*

(g) See *Bowyer, Philpott and Payne, Ltd. v. Mather*, [1919] 1 K. B. 419 ; 33 Digest 24, 106.

(h) 26 Statutes 453.

it is not necessary to prove their corporate name or the constitution or limits of their area. [483]

**Corporations as "Persons."**—The liability of a corpn. depends on whether or not the body corporate can be considered a "person," for by sect. 2 (1) of the Interpretation Act, 1889 (*i*), in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after January 1, 1890, the expression "person" is to include a body corporate, unless the contrary intention appears. This section replaced sect. 14 of the Criminal Law Act, 1827 (*k*), but it does not settle the question whether any particular penal enactment includes a corpn., for the context and the subject-matter must be looked at, and the law on the subject can only be found from a study of various legal decisions. In this connection, it is important to bear in mind that by the general principles of the criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of *mens rea*, *i.e.* an evil intention, or a knowledge of the wrongfulness of the act, and, therefore, in the ordinary cases a corpn. cannot be guilty of a criminal offence. There are, however, exceptions to this general principle, and the principal classes of exceptions were reduced to three by WRIGHT, J., in *Sherras v. De Rutzen* (*l*), when he said, "There is a presumption that *mens rea*, an evil intention or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered. The principal classes of exceptions may perhaps be reduced to three—one is a class of acts which . . . are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty . . . ; another class comprehends some, or perhaps all, public nuisances . . . ; and lastly there may be cases in which, although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right."

In 1612, in the *Sutton's Hospital Case* (*m*), it was held that corpsns. could not commit treason, nor be outlawed, nor excommunicated, for "they had no souls, neither could they appear in person, but by attorney." In *R. v. Birmingham and Gloucester Rail. Co.* (*n*) an indictment was found at the assizes against the Birmingham and Gloucester Rail. Co. for non-feasance. Mr. Justice PATTESON said, with reference to an argument that an indictment would not lie against a corpn.: "Only one direct authority was cited for this proposition; and it is a *dictum* of Lord HOLT in an *Anonymous Case* of 1702 (*o*). The report itself is as follows: 'Note, *per Holt*, L.C.J., a corpn. is not indictable, but the particular members of it are.'" What the nature of the offence was to which the observation was intended to apply does not appear; and on a general proposition it is opposed to a number of cases which show that a corpn. may be indicted for breach of a duty imposed upon it by law, though not for a felony, or for crimes involving personal violence, as for riots or assaults. In the case of *R. v. Stratford-upon-*

(*i*) 18 Statutes 992.

(*k*) 7 & 8 Geo. 4, c. 28.

(*l*) [1895] 1 Q. B. 918; 14 Digest 88, 80.

(*m*) 10 Co. Rep. 1a; 18 Digest 270, 3.

(*n*) (1842), 3 Q. B. 223; 18 Digest 409, 1292.

(*o*) 12 Mod. Rep. 559.

*Avon Corpn.* (*p*), the corpn. was indicted in its corporate name for non-repair of a bridge, and found guilty. Shortly afterwards the question came up for decision whether a corpn. might be indicted for misfeasance. In *R. v. Great North of England Railway* (*q*) the railway company were indicted for cutting through and obstructing a highway, and Lord DENMAN said, "Some *dicta* occur in old cases; 'A corpn. cannot be guilty of treason or of felony.' It might be added 'of perjury or offences against the person.' The Court of Common Pleas lately held that a corpn. might be sued in trespass (*Maund v. Monmouthshire Canal Co.* (*r*)), but nobody has sought to fix them with acts of immorality. These plainly derive their character from the corrupted mind of the person committing them and are violations of the social duties that belong to men and subjects. A corpn., which, as such, has no such duties, cannot be guilty in these cases; but they may be guilty as a body corporate of commanding acts to be done to the nuisance of the community at large."

In *R. v. Tyler and the International Commercial Co., Ltd.* (*s*), BOWEN, L.J., said: "I take it, therefore, to be clear that, in the ordinary case of a duty imposed by statute, if the breach of the statute is a disobedience to the law punishable in the case of a private person by indictment, the offending corpn. cannot escape from the consequences which would follow in the case of an individual by showing that they are a corpn."

The decision in the case of *Pearks, Gunston and Tee, Ltd. v. Ward* (*t*) may be referred to as an illustration of the first class of offence referred to by WRIGHT, J. (*u*). There the court held that a company can be convicted of an offence under the Sale of Food and Drugs Acts, 1875 and 1879 (*a*). CHANNELL, J., said that the question to be considered was whether the matter was one which was absolutely forbidden, or whether it was simply a new offence which had been created and to which the ordinary principle as to *mens rea* applied. The court held that the word "person" included a corpn. on the ground that there is an absolute prohibition of the particular sale mentioned in the enactment. In *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (*b*), however, the House of Lords held that the word "person" in sects. 1 and 15 of the Pharmacy Act, 1868 (*c*), did not apply to a body corporate, as such a body was not a "person" within the meaning of an Act requiring a person to have a personal qualification. In his judgment Lord BLACKBURN said that though "a corpn. cannot, in one sense, commit a crime; a corpn. cannot be imprisoned if imprisonment be the sentence for a crime; a corpn. cannot be hanged or put to death, if that be the punishment for the crime; and so, in those senses, a corpn. cannot commit a crime; a corpn. may be fined, and a corpn. may pay damages," and he disagreed with the reported judg-

(*p*) (1811), 14 East, 348; 26 Digest 577, 2691.

(*q*) (1846), 9 Q. B. 318; 13 Digest 410, 1298.

(*r*) (1842), 4 M. & G. 452; 13 Digest 404, 1258.

(*s*) [1891] 2 Q. B. 588; 13 Digest 409, 1297.

(*t*) [1902] 2 K. B. 1; 13 Digest 352, 898.

(*u*) *Ante*, p. 263.

(*a*) Now repealed and replaced by the Food and Drugs (Adulteration) Act, 1928; 8 Statutes 884.

(*b*) (1880), 5 A. C. 857; 13 Digest 351, 891; 408, 1286. See also *O'Duffy v. Jaffe*, [1904] 2 I. R. 27; 34 Digest 563, 219*i.*

(*c*) 11 Statutes 685, 689.

ment of BRAMWELL, L.J., that a body corporate could not be tried or fined for a libel or for committing a nuisance.

In *Chuter v. Freeth and Pocock, Ltd.* (*d*), relating to a warranty under the Sale of Food and Drugs Act, 1875, Lord ALVERSTONE said : "Where a person is capable of giving a warranty that person is liable to a fine. There is no reason why a warranty should not be given by a corpн. It can give a warranty through its agents. A similar point has been raised in cases concerning the liability of a corpн. in actions, which in the case of an individual would involve an inquiry into a state of mind such as fraud, libel or malicious prosecution. It is well settled that a corpн. may be liable in all these cases.

It was decided in *Evans & Co. v. L.C.C.* (*e*) that a corpн. was an "occupier of a shop" within sect. 4 (7) of the Shops Act, 1912 (*f*), and in *Hirst v. West Riding Union Banking Co.* (*g*) that a corpн. was liable for false representation under the Statute of Frauds, and in another case (*h*) for selling unsound food under sect. 47 of the P.H. (London) Act, 1891 (*i*), but a corpн. has been held not liable for perjury (*k*), nor can it be convicted as a rogue and vagabond under sect. 41 of the Lotteries Act, 1823 (*l*).

A "person" does not include a corpн. when the statute contains expressions that are repugnant to that construction. Thus a company cannot be convicted of the offence under sect. 46 of the Solicitors Act, 1932 (*m*), because that section refers to a person not having in force a practising certificate who pretends to be a solicitor, and contemplates only a person to whom such a certificate could be issued (*n*), but by sect. 1 (1) of the Solicitors Act, 1934 (*nn*), a body corporate or its officers can be convicted for a similar offence to that mentioned in the 1932 Act.

Where the court is satisfied that a contempt has been committed in the case of a corpн., it can order the corpн. to pay a fine instead of making an order of attachment (*o*). [484]

**Procedure.**—Before the passing of the Criminal Justice Act, 1925, a corpн. could not be indicted at assizes, and it was therefore necessary to remove an indictment against a corpн. by *certiorari* into the King's Bench (*p*). Sect. 33 of that Act (*q*) provided machinery to avoid this inconvenience, but did not otherwise alter the law on the subject. This was decided in *R. v. Cory Bros. & Co.* (*r*) where a company was indicted for manslaughter as a felony or for misdemeanor involving personal violence under sect. 31 of the Offences against the Person Act, 1861 (*s*). FINLAY, J., summed up the law on the subject, after examining many

(*d*) [1911] 2 K. B. 832 ; 13 Digest 352, 899.

(*e*) [1914] 3 K. B. 315 ; 13 Digest 352, 903.

(*f*) 8 Statutes 616.

(*g*) [1901] 2 K. B. 560 ; 13 Digest 352, 897.

(*h*) *R. v. Ascanio Puck & Co.* (1912), 76 J. P. 487 ; 13 Digest 352, 900.

(*i*) 11 Statutes 1054.

(*k*) *Wych v. Meal* (1734), 3 P. Wms. 310 ; 13 Digest 409, 1291.

(*l*) *Hawke v. Hulton & Co.*, [1909] 2 K. B. 93 ; 13 Digest 352, 902.

(*m*) 25 Statutes 816.

(*n*) *Law Society v. United Service Bureau, Ltd.* (1933), 29 J. P. 33 ; Digest (Supp.).

(*nn*) 27 Statutes 521.

(*o*) *R. v. Hammond & Co., Ltd.*, [1914] 2 K. B. 866 ; 13 Digest 410, 1306.

(*p*) See *R. v. Daily Mirror Newspapers, Ltd.*, [1922] 2 K. B. 530 ; 13 Digest 410, 1304.

(*q*) 11 Statutes 415.

(*r*) [1927] 1 K. B. 810 ; Digest (Supp.).

(*s*) 4 Statutes 608.

of the cases referred to above, and added, "I am bound by the authorities to say that as the law stands an indictment will not lie against a corpn. either for a felony or for a misdemeanor based on sect. 31 of the Offences against the Person Act, 1861."

Sect. 33 of the Criminal Justice Act, 1925, provides that where a corpn. is charged, whether alone or jointly with some other person, with an indictable offence, the examining justices may if they are of opinion that the evidence offered on the part of the prosecution is sufficient to put the accused corpn. upon trial, make an order empowering the prosecutor to present to assizes or quarter sessions as the case may be, a bill in respect of the offence named in the order, and any such order is to be deemed to be a committal for trial. Justices may deal with the offence summarily where it is an offence which in the case of an adult may be dealt with summarily, and either the corpn. does not appear by a representative, or, if it appears, consents. They may make this order even though the corpn. does not appear to answer questions laid down by the rules, but if a representative does appear, he may answer such questions (*t*).

The justices have not the power to deal summarily with the offence in the case of one offender, where there are joint offenders, if either claims to be tried by a jury (*a*). The corpn. may on arraignment before the court of assize or the court of quarter sessions enter in writing by its representative a plea of guilty or not guilty, and if it fails to do so, the court must enter a plea of not guilty and the trial must proceed. Rules have been made with respect to the service on any corpn. of any document requiring to be served in connection with the proceedings (*b*). The summons must be served by leaving it at or sending it by post to the registered office of the corpn., or, if there be no such office in England, at any place at which it trades or does its business. In the case of local authorities, this would of course mean the usual office of their clerk (*c*).

If the offence is one in which an individual is entitled to claim to be tried by a jury, the corpn. may apply by its representative to be tried by a jury, but if no such claim is made or the representative does not appear, the justices may try the case summarily (*d*).

The term "representative" means a person duly appointed by the corpn. to represent it for the purpose of doing any act or thing which by the section the representative is authorised to do, but such a representative is not, by the appointment alone, qualified to act on behalf of the corpn. before any court for any other purpose (*e*). A representative for the purposes of the section need not be appointed under the seal of the corporation (*f*). [485]

(*t*) As amended by Administration of Justice (Miscs. Provisions) Act, 1933 ; 26 Statutes 87. See also Indictable Offences Rules, 1926, dated June 11, S.R. & O., No. 676.

(*a*) Criminal Justice Act, 1925, s. 33 (2) ; 11 Statutes 416.

(*b*) See the rules in note (*t*) above, Art. 11.

(*c*) Cf. s. 286 of the L.G.A., 1933 ; 26 Statutes 457, as to the service of notices upon a local authority.

(*d*) Criminal Justice Act, 1925, s. 33 (5) ; 11 Statutes 416.

(*e*) *Ibid.*, s. 33 (6).

(*f*) *Ibid.*

## CRIMINAL LUNATICS

|                           | PAGE |                  | PAGE |
|---------------------------|------|------------------|------|
| GENERAL - - - - -         | 267  | LONDON - - - - - | 269  |
| DUTIES OF LOCAL AUTHORITY | 268  |                  |      |

*See also titles :*

LICENSED HOUSES AND HOSPITALS;  
MEDICAL SUPERINTENDENT;  
MENTAL DEFECTIVES;

MENTAL DISORDER AND MENTAL  
DEFICIENCY;  
MENTAL HOSPITALS;  
PERSONS OF UNSOUND MIND.

**General.**—The statutes (*a*) now in force relating to criminal lunatics are the following : The Criminal Lunatics Act, 1800 (*b*) ; the Criminal Lunatics Act, 1838 (*c*) ; the Lunatics Removal (India) Act, 1851 (*d*) ; the Criminal Lunatic Asylums Act, 1860 (*e*) ; the Trial of Lunatics Act, 1883 (*f*) ; the Colonial Prisoners Removal Act, 1884 (*g*) ; and the Criminal Lunatics Act, 1884 (*h*). [486]

Sect. 16 of the Criminal Lunatics Act, 1884, defines a “criminal lunatic” as meaning (1) “Any person for whose safe custody during His Majesty’s pleasure His Majesty or the Admiralty is authorised to give order”; and (2) “any prisoner whom a Secretary of State or the Admiralty has, in pursuance of any Act of Parliament, directed to be removed to an asylum or other place for the reception of insane persons.” For practical purposes, criminal lunatics may be divided into two classes, viz. : (1) King’s pleasure lunatics; and (2) Secretary of State’s lunatics. In class (1) are included (i.) those who, put upon their trial on some criminal charge, are found guilty, but insane, at the time of the act or omission charged; (ii.) those who are found insane upon arraignment, who cannot be assumed to be criminals, but are liable to be tried upon recovering their sanity, and whose detention, therefore, differs in character from that of ordinary lunatics. Cognate to these are persons apparently insane who are under remand and awaiting trial. Class (2) includes convicts and other prisoners undergoing sentences who have become insane under sentence. These persons are strictly criminals, but it is only while they are criminals, *i.e.* during the currency of their sentence, that they are criminal lunatics.

The distinction between criminal lunatics and persons who belong to other classes of mental patients is that all criminal lunatics are in custody by virtue of an order of a court of law; and no criminal lunatic can be discharged without a warrant signed by the Secretary of State. [487]

(*a*) The Lunacy and Mental Treatment Acts, 1890 to 1930, do not apply to criminal lunatics, except where specially provided (Lunacy Act, 1890, s. 340 (1)). The term “criminal lunatic” is preserved by the Mental Treatment Act, 1930, s. 20 (5); see 23 Statutes 172.

(*b*) 4 Statutes 411.

(*c*) *Ibid.*, 465.

(*e*) 18 Statutes 315.

(*g*) 5 Statutes 779.

(*d*) 5 Statutes 407.

(*f*) 4 Statutes 703.

(*h*) 18 Statutes 355.

**Duties of Local Authority.**—The duties of local authorities in relation to criminal lunatics arise only where a criminal lunatic is transferred to a mental hospital provided by a local authority. Such a transfer may take place (1) where a person found to be insane during custody (either before or after conviction) is removed to a mental hospital by an order of the Home Secretary under sect. 2 of the Criminal Lunatics Act, 1884 (*i*), or (2) on an order being made by a justice of the peace under sect. 7 of that Act (*k*). The necessity for a justice's order arises when a criminal lunatic, or person in custody who is certified to be insane, is about to be absolutely discharged, or his sentence is about to determine. Under sect. 9 of the Act, a patient in either of the above classes can only be transferred to a county or borough mental hospital if a legally qualified medical practitioner certifies that the patient can be properly treated in an ordinary mental hospital, or the visiting committee consent to receive him. Cases falling under (2) above are substantially in the position of rate-aided mental patients in respect of whom a reception order has been made under sect. 16 of the Lunacy Act, 1890 (*l*), and must be received by the mental hospital named in the order (*m*). As to chargeability, see *infra*.

The cost of maintenance of a person, who remains a criminal lunatic in a local authority's mental hospital, is paid out of moneys provided by Parliament, at the rate applicable to mental patients sent to the hospital from a place outside the county or county borough to which the hospital belongs; see sect. 10 of the Criminal Lunatics Act, 1884, as amended by L.G.A., 1929, Sched. X. (*n*). The cost of removing to the hospital a person transferred under sect. 7 of the Act of 1884 is paid from the same source. The Treasury may contribute towards the cost of maintenance of a person who is absolutely or conditionally discharged, until the expiration of his sentence, or so long as any condition of discharge remains in force (*ibid.*, sect. 10 (2)).

The chargeability of a person who becomes a rate-aided mental patient by virtue of an order of a justice under sect. 7 of the Act of 1884 is governed by sect. 8 of that Act (*o*). Primarily, he is chargeable to his county or county borough of ordinary residence at the time when the offence for which he was sentenced was alleged to have been committed. If this cannot be ascertained, he is chargeable to the county or county borough in which the offence was alleged to have been committed, or, if the offence was committed overseas, where he was first apprehended (*p*). In the case of a man (or the wife or infant child of a man) in the Army or Navy at the commission of the offence, chargeability rests on the county or county borough to which the soldier or sailor appears to be chargeable for the purposes of the Poor

(*i*) 13 Statutes 355.

(*k*) *Ibid.*, 357.

(*l*) 11 Statutes 25.

(*m*) Criminal Lunatics Act, 1884, s. 8; 13 Statutes 358.

(*n*) 13 Statutes 361.

(*o*) Note that a prisoner dealt with as a mental defective under ss. 8 and 9 of the Mental Deficiency Act, 1913, as amended by the Mental Deficiency Act, 1927, s. 5 (see 11 Statutes 166, 200), is not a criminal lunatic, and the cost of maintenance is payable as provided by the Mental Deficiency Acts, 1913 to 1927. As the result of s. 85 (1) of the L.G.A., 1929, and the Second Schedule, no direct contribution is received in these cases out of moneys provided by Parliament; see 10 Statutes 937, 979.

(*p*) As amended by 10th Sched. to L.G.A., 1929; 10 Statutes 995. In the case of apprehension abroad, the chargeability is on the place of landing in the United Kingdom.

Law Act, 1930, according to the statements made by him on enlistment in the Army, or entry into the Navy (q). [488]

**London.**—In London mental hospitals are provided by the L.C.C. and the City of London Corp. under the Lunacy and Mental Treatment Acts, 1890 to 1930. The mental hospitals of the Metropolitan Asylums Board were transferred to the L.C.C. as from April 1, 1930, by the L.G.A., 1929 (r). [489]

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(q) See proviso to s. 8 (1) of the Criminal Lunatics Act, 1884; 13 Statutes 358.

(r) S. 113; 10 Statutes 953.

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## CROWN PROPERTY

| PAGE  | PAGE  |
|---|---|
| GENERAL EXEMPTION OF THE CROWN AND CROWN PROPERTY — — — — — 269   | Metropolis Management Acts, 1855 and 1862 — — — — — 272       |
| STATUTORY EXEMPTIONS OF CROWN PROPERTY P.H.A., 1875 — — — — — 270 | London Building Act, 1930 — — — — — 272                       |
| Infectious Disease (Notification) Act, 1889 — — — — — 270         | EXEMPTION OF CROWN PROPERTY 272                               |
| P.H.As. Amendment Act, 1907 — — — — — 270                         | Rates — — — — — 272   |
| P.H. (Smoke Abatement) Act, 1926 — — — — — 270                    | Exceptions — — — — — 273                                      |
| Factory and Workshop Act, 1901 — — — — — 270                      | Treasury Contributions in lieu of Rates — — — — — 273         |
| Electric Lighting (Clauses) Act, 1899 — — — — — 270               | Income Tax — — — — — 274                                      |
| Land Charges Act, 1925 — — — — — 271                              | Land Tax — — — — — 274  |
| Road Traffic Act, 1930 — — — — — 271                              | Paving Charges under the P.H.A., 1875 — — — — — 274           |
| Town and Country Planning Act, 1932 — — — — — 271                 | Bye-laws under the P.H.A., 1875 — — — — — 274                 |
|   | The Lands Clauses Acts — — — — — 274                          |
|   | GOVERNMENT DEPARTMENTS IN CHARGE OF CROWN LANDS — — — — — 274 |
|   | LONDON — — — — — 275  |

**General Exemption of the Crown and Crown Property.**—The Crown is exempt from the operation of all statutes in which it is not expressly named as bound. “It is usual for the legislature in Acts of Restraint, which they intend to bind the King, to name him expressly, and if he is not expressly named, it has always been taken heretofore that the legislature intended only to bind the subjects, and to make the Act extend to them and not to the King, for he is favoured in all expositions of Acts” (a). “Where the King has any prerogative estate, right, title or interest, he shall not be barred of them” by the general words of an Act of Parliament (b). This doctrine extends to all property of the Crown, to all property occupied by the servants of the Crown for the purposes of the Crown, and to all property occupied for the purposes of the State (c). [490]

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(a) *Willion v. Berkley* (1561), 1 Plowd. 223, 239; 11 Digest 591, 928.

(b) *Case of Magdalen College* (1615), 11 Co. Rep. 66 b, 74 b; 11 Digest 546, 496.

(c) *Mersey Docks v. Cameron, Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443; 38 Digest 466, 286; *R. v. McCann* (1868), L. R. 3 Q. B. 141, 677; 38 Digest 467, 289; *Coombes v. Berkshire JJ.* (1882), 9 App. Cas. 61, 75; 38 Digest 465, 281.

**Statutory Exemptions of Crown Property.**—The *P.H.A.*, 1875, by sect. 327 (d), provides that nothing in the Act shall be construed to authorise any local authority to disturb or interfere with any lands or other property of the Admiralty or the War Department without their consent. [491]

The *Infectious Disease (Notification) Act*, 1889, by sect. 15 (e), excludes the operation of the Act from any building, ship, vessel, boat, tent, van, shed or similar structure belonging to the Crown, and any inmate thereof. [492]

The *P.H.As. Amendment Act*, 1907, sect. 12 (f), provides that nothing in the Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown, and in particular nothing therein authorises any local authority to take, use, or in any manner interfere with any portion of the shore, or bed of the sea, or of any river, channel, creek, bay, or estuary, or any land, hereditaments, or right whatsoever belonging to the Crown, or under the management of the Commissioners of Woods or of the Board of Trade, without the previous consent in writing of those Commissioners or that Board. Sect. 7 of the *P.H.A.*, 1925 (g), applies sect. 12 of the Act of 1907 to the purposes of the Act of 1925, and by sect. 10 of that Act enacts that, without prejudice to the generality of sect. 12, nothing in the Act of 1925 shall affect any privilege of the Postmaster-General under the *Telegraph Act*, 1869 (h), or any works or apparatus belonging to him, or any power conferred on the Minister of Transport by the *London Traffic Act*, 1924 (i). [493]

The *P.H. (Smoke Abatement) Act*, 1926, by sect. 11 (k), provides that proceedings in respect of a smoke nuisance existing on any premises occupied for the public service of the Crown cannot be taken by the local authority. But if it appears to them that a smoke nuisance exists, they are required to report the circumstances to the appropriate Government department; and if the responsible Minister is satisfied after due inquiry that such a nuisance exists, he must cause such steps to be taken as may be necessary to abate the nuisance and to prevent a recurrence thereof. [494]

The *Factory and Workshop Act*, 1901, sect. 150 (l), applies that Act to factories and workshops belonging to the Crown; but in case of any public emergency the Secretary of State may by order exempt from the Act any Crown factory or workshop, or any other factory or workshop in respect of work which is being done for the Crown under a specified contract. The powers conferred by the Act on the local authority are, in the case of factories and workshops belonging to or in the occupation of the Crown, to be exercised by a Government inspector under the Act (*ibid.*). [495]

The *Electric Lighting (Clauses) Act*, 1899, in sect. 80 of the Schedule (m), provides that, although any shore, bed of the sea, river,

(d) 18 Statutes 759.

(e) *Ibid.*, 815.

(f) *Ibid.*, 914.

(g) *Ibid.*, 1117. As the Act of 1907, and the Acts of 1925 and 1926 mentioned later, are all to be read as one with the *P.H.A.*, 1875, this has the effect of extending the later provisions as to exemptions to the *P.H.A.*, 1875.

(h) 19 Statutes 251.

(i) *Ibid.*, 172.

(k) 18 Statutes 1161.

(l) 8 Statutes 596.

(m) 7 Statutes 740. The provisions of this schedule are incorporated with practically all provisional or special orders under the *Electric Lighting Acts*.

channel, creek, bay, or estuary is included in an area of supply, nothing in the special order (*n*) authorises the undertakers to take, use or in any manner interfere with, any portion of that shore or bed of the sea, or of the river, channel, etc., or any right in respect thereof belonging to His Majesty in right of the Crown and under the management of the Board of Trade, without the previous consent in writing of that department. [496]

The provisions of the *Land Charges Act*, 1925, bind the Crown (*o*) ; but the Act is not to be construed as rendering land owned by, or occupied for the purposes of, the Crown subject to any charge to which, independently of the Act, it would not be subject. [497]

By sect. 121 (2) of the *Road Traffic Act*, 1930 (*p*), Parts I. and III. of that Act, other than sect. 54 as to extraordinary traffic, apply to vehicles and persons in the public service of the Crown ; subject, however, to the exceptions that (1) sect. 9 (3), as to the restriction on persons under twenty-one years driving heavy locomotives, light locomotives, motor tractors, or heavy motor cars ; (2) sect. 18 restricting the number of trailers which may be drawn by motor vehicles ; and (3) sect. 19 limiting the time for which drivers of certain vehicles may remain continuously on duty—shall not apply in the case of motor vehicles owned by the Admiralty, the War Department, or the Air Ministry, and used for naval, military, or air force purposes, or, in the case of vehicles so used, while being driven by persons subject to the orders of any member of the armed forces of the Crown ; and the M. of T. may by regulations vary, in relation to any such vehicles whilst being driven as aforesaid, the limits of speed in the First Schedule (*q*) to the Act of 1930. A new Schedule is substituted for that Schedule by sect. 2 of the Road Traffic Act, 1934, and the regulations may now under sect. 121 (2) as amended vary any enactment, or statutory rule or order, imposing a speed limit on motor vehicles.

The *Road Transport Lighting Act*, 1927, may also be referred to. Sect. 14 (2) (*r*) of that Act provides that it shall apply to vehicles and persons in the public service of the Crown. The *Road Vehicles Lighting Regulations*, 1929 (*s*), made by the M. of T. under that Act, thus apply to vehicles and persons in the service of the Crown.

Excise duty is not payable in respect of vehicles belonging to the Crown (*a*). [498]

Under sect. 43 of the *Town and Country Planning Act*, 1932 (*b*), where a local authority or joint committee propose to include in a planning scheme any land situate within the "prescribed distance" from any of the royal palaces or parks, or where an authority propose to acquire any such land under that Act, the authority, before preparing the scheme, or authorising the acquisition of the land or the raising of any loan for the purpose, must communicate with the Commissioners of Works ; and the Minister of Health, before approving the scheme, or authorising either of the steps just mentioned, must take into consideration any recommendations he may have received from the Com-

(*n*) This includes both provisional and special orders.

(*o*) S. 25 ; 15 Statutes 545.

(*p*) 23 Statutes 687. This section was amended by s. 40 and Sched. III. to the *Road Traffic Act*, 1934.

(*q*) *Ibid.*, 689.

(*r*) 19 Statutes 105.

(*s*) S.R. & O., 1929, No. 723.

(*a*) See s. 12 (1) (*g*) of Roads Act, 1920 ; 19 Statutes 96 ; and *Road Vehicles (Reg. and Lic.) Regulations*, 1924, Art. 32 (S.R. & O., 1924, No. 1462).

(*b*) 25 Statutes 511.

missioners with reference to the proposal. The "prescribed distance" for the purposes of this provision is two miles in the case of Windsor Castle, Windsor Great Park and Windsor Home Park, and in the case of any other royal palace or park, half a mile (c). [499]

*Metropolis Management Acts*, 1855 and 1862.—A special exemption for Crown property is provided for in sect. 241 of the Metropolis Management Act, 1855 (d), and sects. 116, 117 of the M.M. Amdt. Act, 1862 (e). In the case of *Westminster Vestry v. Hoskins* (f) it was held that volunteer premises were not exempt from the sanitary provisions of these Acts. That case, however, cannot now be regarded as good law in view of the decisions in *Gorton Local Board v. Prison Commissioners*, and *Hornsey U.D.C. v. Hennell* (see post, p. 274). [500]

*London Building Act*, 1930.—By sect. 226 of this Act (g) the provisions of the Act dealing with the control of buildings in the London area do not apply to buildings vested in, and in the occupation of, the Crown, either beneficially or as part of the hereditary revenues of the Crown; and by sect. 226 (2) (b) nothing in the Act authorises the L.C.C. to take any land, hereditaments or rights enjoyed by His Majesty in the rights of his Crown and being under the management of the Commissioners of Crown lands, except with the consent in writing of those Commissioners. [501]

It will be realised that owing to the general principle mentioned at the beginning of this article, most of the exemptions in favour of the Crown declared in the ten series of Acts already referred to were really unnecessary. [502]

**Exemption of Crown Property. Rates.**—The Crown not being named in the Statute of Elizabeth (h), which is the foundation of the liability to the poor rate, now represented by the general rate, is not bound by that statute. No rate can be imposed in respect of property in the occupation of the Crown, or in the occupation of its servants where this occupation amounts to the occupation of the Crown. No rate can be imposed in respect of property occupied by persons who are not, strictly speaking, servants of the Crown, if they occupy for public purposes premises which are required by the Government, and which are thus in effect to be regarded as administered by the Crown. The exemption from liability to rates applies to property used for Government purposes although provided and maintained by means of local rates. Property occupied for "public purposes" is not exempt unless it comes within the above propositions (i).

These propositions are based in the main on the following four cases, namely : *Jones v. Mersey Docks* (k), *Leith Harbour Commissioners v. Inspector of the Poor* (l), *Greig v. Edinburgh University* (m), and *Coomber v. Berkshire JJ.* (n). Other cases relating to the

(c) Town and Country Planning Regulations, 1933, Art. 42 (S.R. & O., 1933, No. 742).

(d) 11 Statutes 944.

(e) *Ibid.* 994.

(f) [1899] 2 Q. B. 474 ; 34 Digest 585, 65.

(g) 23 Statutes 330.

(h) The Poor Relief Act, 1601 ; 14 Statutes 477.

(i) Ryde on Rating, 6th ed., pp. 109—110.

(k) (1865), 11 H. L. Cas. 443 ; 38 Digest 466, 286.

(l) (1866), L. R. 1 Sc. & Div. 17 ; 38 Digest 480, 390.

(m) (1868), L. R. 1 Sc. & Div. 348 ; 38 Digest 472, 327.

(n) (1883), 9 App. Cas. 61 ; 38 Digest 465, 281.

exemption from rates of Crown property or property occupied for Government purposes are cited in the note below (o).

The occupation of Crown property is rateable if the occupants are there for their own purposes. If they are there partly for their own purposes and partly for the purposes of the Crown, they are rateable to the extent to which they are there for their own purposes (p). [503]

*Exceptions.*—An exception to the general rule that hereditaments occupied by or for the Crown are exempt is provided for in the Telegraph Act, 1868. Under sect. 22 (q) of that Act, all land, property, and undertakings purchased or acquired by the Postmaster-General under the Act are assessable and rateable in respect of local, municipal, and parochial rates, assessments, and charges, at sums not exceeding the rateable value at which such land, property, and undertakings were properly assessed or assessable at the time of purchase or acquisition by the Postmaster-General.

Another exception to the general rule that Crown property is not liable to pay rates arises under the Land Drainage Act, 1930. By sect. 77 (r) of that Act its provisions in general are applied to land belonging to His Majesty in right of the Crown or the Duchy of Lancaster and to land belonging to the Duchy of Cornwall or a Government department. Thus Crown lands are liable to pay drainage rates under that Act, except drainage rates in respect of "tidal lands," and for this purpose "tidal lands" are lands below the high-water mark of ordinary spring tides (s). [504]

*Treasury Contributions in lieu of rates.*—The Treasury make a voluntary contribution in lieu of rates calculated on an assessment made by their own valuers.

In response to a representation made by the Central Valuation Committee, the Treasury, in a letter of January 17, 1928, stated that they had given directions to the Treasury valuer for a re-valuation for the purposes of the Government contribution in lieu of rates, of hereditaments in the occupation of the Crown in respect of which a contribution is granted by the Treasury, and to give effect to the resulting revision of contributions as from the date on which the new valuation list under the R. & V.A., 1925, came into force (t). The value on which the contribution in respect of Crown property is calculated is to be entered in the column for rateable value of the valuation list

(o) *R. v. Smith* (1857), 26 L. J. (M. C.) 105 ; 38 Digest 467, 295 (post offices); *R. v. Stewart* (1857), 8 E. & B. 360 ; 38 Digest 433, 70 (Admiralty); *Lancashire JJ. v. Stretford Overseers* (1858), E. B. & E. 225 ; 38 Digest 481, 395 (police stations); *Hodgson v. Carlisle Local Board* (1857), 8 E. & B. 116 ; 38 Digest 465, 278 (assize courts and judges' lodgings); *R. v. Manchester Overseers* (1854), 3 E. & B. 336 ; 38 Digest 465, 283 (county courts); *R. v. Shepherd* (1841), 1 Q. B. 170 ; 38 Digest 434, 77 (gaols); *R. v. Fuller* (1855), 8 E. & B. 365, n. ; 38 Digest 434, 76 (militia premises); *Pearson v. Holborn Union*, [1893] 1 Q. B. 389 ; 38 Digest 486, 444 (volunteer premises); *Wixon v. Thomas*, [1912] 1 K. B. 690 ; 38 Digest 487, 448 (premises of territorial forces). But volunteer (or territorial) premises which are not used exclusively for the purposes of the Crown are rateable ; see *Rayner v. Drezett* (1900), 64 J. P. 567 ; 38 Digest 486, 445, and *Lewis v. Durham Union* (1904), 68 J. P. 220 ; 38 Digest 487, 446.

(p) *R. v. Ponsonby* (1842), 3 Q. B. 14 ; 38 Digest 452, 186 ; *Middlesex County Council v. St. George's Union*, [1897] 1 Q. B. 64 ; 38 Digest 492, 481 ; *Worcestershire County Council v. Worcester Union*, [1897] 1 Q. B. 480 ; 38 Digest 468, 298.

(q) 19 Statutes 250.

(r) 23 Statutes 578.

(s) See s. 77 (1) (c), (2).

(t) See Fourth Series of Representations of the Central Valuation Committee, pp. 6, 46, 47.

and taken into account in calculating totals or the proceeds of rates (u).  
[505]

*Income Tax.*—The Crown is not liable to income tax. This was so held with reference to assize courts and police stations in *Coomber v. Berks JJ.* (a). That case shows that the poor rate cases upon this matter are applicable also to the payment of income tax.

*Land Tax.*—Lands in the occupation of the Crown or its servants for public purposes are exempt from land tax (b); but Crown lands in the occupation of private persons are not exempt. Exemption depends on occupation, not on ownership (c). [506]

*Paving Charges under the P.H.A., 1875.*—Crown property was held to be exempt from paving charges under sect. 150 of this Act (d), in *Hornsey U.D.C. v. Hennell* (e). The property dealt with in that case consisted of volunteer premises; but the decision was based on the general doctrine of the exemption of the Crown, notwithstanding the special exemption in sect. 327 thereof, and not upon sect. 26 of the Volunteer Act, 1863 (f), which contains a provision exempting volunteer premises, certified by the Secretary of State, from rates and assessments.

[507]

*Bye-laws under the P.H.A., 1875.*—It was held in *Gorton Local Board v. Prison Commissioners* (g) that Crown property, used for purposes of the Crown and occupied by servants of the Crown, was entirely under the control of the Crown and cannot be controlled by the local authority, and in particular that such property is not subject to the local authority's building bye-laws. [508]

*The Lands Clauses Acts.*—These Acts do not apply to the Crown (h), and Crown lands cannot be purchased compulsorily, whether under the P.H.A. or other Acts. But, subject to protective clauses, it is understood that the M. of H. will include such lands in provisional orders for compulsory purchase, if the local authority have previously obtained the assent of the Government Department concerned (i).  
[509]

**Government Departments in charge of Crown Lands.**—The general management of the land revenues of the Crown is entrusted to the Commissioners of Crown Lands. These comprise two permanent Commissioners who are appointed by Royal Warrant under the Sign Manual, and hold office during the pleasure of the Crown, together with the Minister of Agriculture and Fisheries for the time being.

The Commissioners of Works and Public Buildings comprise a first Commissioner, appointed by Royal Warrant and holding office during pleasure, together with the principal Secretaries of State and the President of the Board of Trade. The Commissioners in fact never meet; but unless it is expressly provided to the contrary, acts of the

(u) R. & V.A., 1925, s. 64 (3) (b); 14 Statutes 684.

(a) (1883), 9 App. Cas. 61; 38 Digest 465, 281.

(b) *A.-G. v. Hill* (1836), 2 M. & W. 160; 30 Digest 303, 37.

(c) *Colchester (Lord) v. Kewney* (1867), L. R. 2 Ex. 253; 30 Digest 303, 38.

(d) 13 Statutes 686.

(e) [1902] 2 K. B. 73; 42 Digest 690, 1051.

(f) 17 Statutes 117.

(g) (1887), reported in [1904] 2 K. B. 165, n.; 42 Digest 690, 1050.

(h) *Re Manor of Lowestoft and G. E. Rail. Co.* (1883), 24 Ch. D. 253, C. A.: 11 Digest 249, 1519.

(i) As to the powers of the Commissioners of Crown Lands to grant Crown land for public and charitable purposes, and to dedicate such land for streets, open spaces, etc., see Crown Lands Act, 1927, ss. 10, 11; 3 Statutes 335, 336.

Commissioners are valid if done by the first Commissioner or by any two Commissioners. Amongst other powers and functions of the Commissioners of Works, they have the management and control of numerous public buildings, the management of the forestal rights and interests of the Crown in Epping Forest, the administration of the Acts relating to the geological survey of the United Kingdom, and the guardianship and control of ancient monuments.

The Commissioners of Works and the Commissioners of Crown Lands must observe the orders and directions of the Treasury concerning their respective duties and offices; and the Treasury may transfer from the Commissioners of Crown Lands to the Commissioners of Works any of the powers and duties formerly vested in the Commissioners of Woods, Forests, Land Revenues, Works, and Buildings under any local or personal Act, and transferred to the Commissioners of Crown Lands under the Crown Lands Act, 1851 (*k*). The Treasury are also empowered, on the representation of the Commissioners of Crown Lands and the Board of Trade, to transfer any foreshore from the management of the Commissioners to that of the Board, or from the management of the Board to that of the Commissioners (*l*).

The rights and interests belonging to the Crown in the foreshore throughout the United Kingdom, up to high-water mark, were transferred from the management of the Commissioners of Woods and Forests to that of the Board of Trade by the Crown Lands Act, 1866 (*m*), with the exception of the foreshores of the Thames, the Tees, and the County Palatine of Durham, any foreshore fronting Crown property, and the mines under any foreshore (*n*).

London.—See *ante*, p. 272. [510]

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(*k*) Ss. 32, 33, 34; 3 Statutes 288, 289.

(*l*) Crown Lands Act, 1906, s. 2 (1); 3 Statutes 327.

(*m*) S. 7; 3 Statutes 310.

(*n*) *Ibid.*, s. 17 and Sched. II., and ss. 20, 21; 3 Statutes 312, 313, 315.

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## CUL DE SAC

*See DEDICATION AND ADOPTION OF HIGHWAYS.*

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## CUSTODY, INSPECTION AND DEPOSIT OF PARISH DOCUMENTS

*See RECORDS AND DOCUMENTS.*

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## CUSTOS ROTULORUM

| HISTORICAL | PAGE<br>— — — | PRESENT POSITION | PAGE<br>— — — |
|------------|---------------|------------------|---------------|
|            | 276           |                  | 276           |

*See also title : CLERK OF THE PEACE.*

**Historical.**—The custos rotulorum is an officer, appointed for each county of England and Wales, and entrusted with the supervision of the custody of county records. The office is of great antiquity. Originally the custos rotulorum was appointed by the Lord Chancellor (*a*), and had the custody of the rolls or records of the county justices and also of the commission of the peace. By statute 37 Hen. 8, c. 1 (1545) (*a*), it was provided that thenceforth the appointment should be by bill under the sign manual of the King; the rights of the Archbishop of York, of the Bishops of Durham and Ely, and of other persons to whom the right of appointing the custos in specific places had been granted by the Crown, were preserved (*ibid.*, s. 4). In 1549, by statute 3 & 4 Edw. 6, c. 1 (*b*), the former practice was restored, and the custos was again appointed by the Lord Chancellor, with savings in favour of persons who had the right of making the appointment under Royal Letters Patent. By statute 1 Will. & Mar. c. 21, s. 3 (*c*), the statute of Hen. 8 was revived, and from 1688 onwards appointments have been made by the Crown, except where the Crown had conferred the right of appointment on a subject.

The right of appointing the custos in the County Palatine of Durham was transferred to the Crown by sect. 3 of the Durham (County Palatine) Act, 1836 (*d*). By sect. 6 of the Liberties Act, 1836 (*e*), the custos for the West Riding of Yorkshire became the custos for the Liberty of Ripon, and for the Liberty of Cawood, Wistow and Otley, and the custos for the county of Nottingham became the custos for the Liberty of the Soke of Southwell. By sect. 7 of the same statute the Crown was empowered to appoint the custos for the Isle of Ely. By the County of Hertford and Liberty of St. Alban Act, 1874, s. 5 (*f*), the custos for the county of Hertford became the custos for the entire county, including the Liberty of St. Alban. [511]

**Present Position.**—The person appointed as custos rotulorum is frequently the same person as is appointed Lord Lieutenant of the county.

Formerly the custos appointed the clerk of the peace of the county, but this function was transferred to the standing joint committee of

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(*a*) See preamble to 37 Henry 8, c. 1; 13 Statutes 410.

(*b*) Repealed by the S.L.R. Act, 1863.

(*c*) 13 Statutes 411.

(*d*) 4 Statutes 39.

(*e*) *Ibid.*, 41.

(*f*) 10 Statutes 563.

the quarter sessions and of the county council by sect. 83 (2) of the L.G.A., 1888 (g).

The power of the custos to give directions as to documents and records of a county is preserved by sect. 5 (3) of the L.G. (Clerks) Act, 1931 (*h*) ; his power in relation to county documents and records generally is preserved by sect. 279 (1) of the L.G.A., 1933 (*i*). The custos does not appear to possess any powers in relation to the documents and records of boroughs.

In practice, the powers of the custos are seldom exercised, but it is possible that he might be called upon to give directions if, owing to a separation becoming operative of the offices of clerk of the peace and clerk of the county council, doubts should arise as to which officer should have the custody of certain of the county documents. [512]

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(g) 10 Statutes 753. As to the present law as to the appointment of clerks of the peace of counties, see title CLERK OF THE PEACE.

(h) 24 Statutes 245.

(i) 26 Statutes 453.

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## CUTTING OFF WATER SUPPLY

*See WATER SUPPLY.*

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## CYCLISTS

*See BICYCLES.*

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## DAIRIES

*See MILK AND DAIRIES.*

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## DAMAGE, COMPENSATION FOR

|                                    | PAGE |                              | PAGE |
|------------------------------------|------|------------------------------|------|
| GENERAL - - - - -                  | 278  | PERSONS ENTITLED - - - - -   | 281  |
| AMOUNT OF COMPENSATION - - - - -   | 279  | STATUTORY POWERS GIVING RISE |      |
| RECOVERY OF COMPENSATION - - - - - | 280  | TO COMPENSATION - - - - -    | 281  |
| NATURE OF THE DAMAGE - - - - -     | 280  | LONDON - - - - -             | 285  |

*See also titles : ARBITRATIONS ;  
COMPENSATION ON ACQUISITION OF LAND ;  
NEGLIGENCE ;  
NUISANCES.*

FOR THE GENERAL LAW RELATING TO THE COMPUTATION OF DAMAGE, *See HALSBURY'S LAWS OF ENGLAND* (2ND ED.), VOL. 10, TITLE "DAMAGES."

**General.**—In the case of the *Public Works Commissioner v. Logan* (*a*) it was said that the intention of allowing persons to take private property without compensation could not be attributed to the legislature, unless such an intention was expressed in unequivocal terms (*b*). When powers are granted to local authorities or other bodies, the exercise of which may cause damage to property, a provision for compensation is usually to be found in the Act conferring such powers. The acquisition of land is dealt with under the title COMPENSATION ON ACQUISITION OF LAND, and this article deals only with other cases covered by the P.H.A., 1875, and those Acts which are to be read as one with that Act (*c*). By sect. 308 of the Act of 1875 (*d*), "Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter in which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers ; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation does not exceed the sum of £20, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction." The method of arbitration is prescribed by sects. 179—181 (*e*) of the Act, and these are dealt with under the title ARBITRATIONS at p. 402 of Vol. I.

Looking to the far-reaching nature of the activities of a local authority in promoting schemes of sewerage and water supply, in preventing the spread of disease, and in the care and treatment of patients, it will be seen that this provision for compensation is extraordinarily wide, and on the face of it seems to give any person a right to compensation

(*a*) [1903] A. C. 355 ; 42 Digest 704, 1212.

(*b*) See e.g. s. 19 of the Town and Country Planning Act, 1932 ; 25 Statutes 492.

(*c*) See e.g. s. 2 (1) of the P.H.A. Amendment Acts, 1890 and 1907, and s. 1 (3) of the P.H.A., 1925 ; 13 Statutes 824, 911, 1115.

(*d*) 13 Statutes 755.

(*e*) *Ibid.*, 702—704.

if he sustains damage by reason of the exercise by the local authority of any powers conferred by the Act, so long as the claimant is not himself in default.

At one time, it was thought that a provision of this kind should be read as restricted to compensation for damage to land or an interest in land (*f*). But later it was held that sect. 308 of the Act of 1875 allowed compensation for the wrongful condemnation of meat under sect. 117 of the Act (*g*) and the limitation of the section to damage to land must be regarded as obsolete. It has also been decided that sect. 308 allows compensation for a temporary obstruction of access to premises while works are being constructed by a council (*h*).

But the damage complained of must be such as would be actionable if the Act of Parliament had not authorised the performance by the council of the act which caused the damage (*i*). And the act complained of must be an act performed in the execution of the P.H.As. It is not sufficient if it is performed under the Highway Acts in the execution of the duties of surveyor of highways, notwithstanding that sect. 144 of the P.H.A., 1875 (*k*), transferred these duties in a borough or urban district to the council, in succession to the surveyor of highways (*l*). [513]

Sect. 308 of the Act of 1875 does not cover a case in which the damage arises through the negligent performance by the council of a power conferred by the Act. In this instance, the owner of the property damaged may pursue an action against the council for damages and is not relegated to a claim under the section for compensation (*m*).

In the case of *Re Davies and the Rhondda U.D.C.* (*n*), CHANNELL, J., said : "A person who claims compensation under sect. 308 has to prove four things : that the authority has exercised its powers ; that he was not in default ; that he has suffered damage ; and the amount of such damage. But only with regard to the two last things can the matter be referred to arbitration, though, of course, all can be disputed. The arbitrator and umpire are bound to assume the exercise of the powers and that the person injured was not in default." [514]

**Amount of Compensation.**—In sect. 308 the words "full compensation" are used, and in many cases the meaning of this phrase has been discussed. It has been held that extra costs reasonably incurred over and above party and party taxed costs in successful litigation with a local authority under the P.H.A., 1875, cannot be recovered as compensation (*o*). A notice of intention to construct a sewer which was not commenced, the notice being withdrawn by the council after the commencement of the arbitration, was held not to enable the arbitrator to award either compensation or the costs of the

(*f*) See *Herring v. Metropolitan Board of Works* (1865), 34 L. J. (M. C.) 224; 11 Digest 141, 268.

(*g*) 13 Statutes 673. See *Hobbs v. Winchester Corpns.*, [1910] 2 K. B. 471; 14 Digest 36, 64, and other cases as to meat mentioned later.

(*h*) *Lingké v. Christchurch Corpns.*, [1912] 3 K. B. 595; 11 Digest 141, 269.

(*i*) *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 11 Digest 140, 265, and *Hall v. Bristol Corpns.* (1867), L. R. 2 C. P. 322; 33 Digest 14, 38.

(*k*) 13 Statutes 683.

(*l*) *Burgess v. Northwich Local Board* (1880), 6 Q. B. D. 264; 33 Digest 14, 39.

(*m*) *Clothier v. Webster* (1862), 6 L. T. 461; 11 Digest 295, 2251; *Howard-Flanders v. Maldon Corpns.* (1926), 90 J. P. 97; 135 L. T. 6; Digest (Supp.).

(*n*) (1899), 80 L. T. 696.

(*o*) *Burnett v. Eccles Corpns.*, [1900] 2 Q. B. 423; 33 Digest 14, 44.

arbitration (*p*), but the arbitrator might have awarded compensation for damage prior to the abandonment of the work, if this question had been submitted for his decision (*p*).

Different decisions have been given as to compensation in regard to the seizure of meat for condemnation under sect. 117 of the P.H.A., 1875 (*q*). In one case (*r*) where a carcase was seized and the magistrate refused to condemn it, the full compensation was held by the Court of Appeal to include the costs incurred in attending with witnesses to oppose the condemnation of the carcase, but not to include the value of the carcase, as the owner was not entitled to refuse to take it back. But in the case of *Re Davies and Rhondda U.D.C.* (*s*), a divisional court held that the costs of successfully defending a prosecution under sect. 117 for exposing unsound meat for sale could not be awarded as part of the compensation, which should be paid only for the value of the meat. In *Walshaw v. Brighouse Corpn.* (*t*), where the meat seized was found to be sound, the Court of Appeal decided that full compensation included the loss of the carcase, the expenses of defending the prosecution, and compensation for the loss of business which immediately and necessarily followed the seizure. The correctness of the latter decision on the last point was, however, doubted by the Court of Appeal in *Hobbs v. Winchester Corpn.* (*u*). [515]

**Recovery of Compensation.**—Where a method of recovering compensation is given by a statute it is exclusive, and an action will not lie for the amount (*a*), but it is to be noted that by sect. 308 proceedings for the recovery of a sum of less than £20 may be taken in a court of summary jurisdiction, not exclusively, but at the option of either party. An action may, however, be brought for the negligent exercise of statutory powers (*b*), and where in such a case a nuisance can be proved, the remedy is a mandatory injunction and not a claim for compensation (*c*). Where the council seek to escape from a claim for compensation on the ground that the proper remedy is an action based on the negligence of a contractor, the burden of proving such negligence lies on them (*d*). In *Brierley Hill Local Board v. Pearsall* (*e*) it was held that the determination of the liability was not a condition precedent to the ascertainment of compensation. If, therefore, the council dispute liability, they should refuse to act on the award and leave the claimant to bring an action to enforce it (*f*). [516]

**Nature of the Damage.**—As has already been said (*g*), the damage

(*p*) *Davis v. Witney U.D.C.* (1889), 63 J. P. 279; 41 Digest 22, 166.

(*q*) 13 Statutes 673.

(*r*) *Re Bater and Birkenhead Corpn.*, [1893] 2 Q. B. 77; 25 Digest 109, 331.

(*s*) See *ante*, p. 279.

(*t*) [1899] 2 Q. B. 286; 25 Digest 113, 367.

(*u*) [1910] 2 K. B. 471; 14 Digest 36, 64.

(*a*) *Hammersmith and City Rail. Co. v. Brand* (1869), L. R. 4 H. L. 215; 11 Digest 106, 28.

(*b*) *Mersey Docks and Harbour Board v. Gibbs* (1866), L. R. 1 H. L. 93; 38 Digest 35, 209, and *Arnott v. Whitby U.D.C.* (1909), 101 L. T. 14; 26 Digest 334, 654.

(*c*) *Sellors v. Matlock Bath Local Board* (1885), 14 Q. B. D. 928; 26 Digest 332, 638.

(*d*) *St. James and Pall Mall Electric Light Co. v. R.* (1904), 73 L. J. (K. B.) 518; 38 Digest 51, 294.

(*e*) (1884), 9 App. Cas. 595; 38 Digest 57, 334.

(*f*) *Re Walker and the Beckenham Local Board* (1884), 48 J. P. 264; 11 Digest 198, 772; *Re Willesden Local Board and Wright*, [1896] 2 Q. B. 412; 2 Digest 567, 1932.

(*g*) See *ante*, p. 279.

must be actionable. Future as well as present damage must be considered, such as damage arising from the illegality of building over a sewer which had been laid (*h*). Remote or consequential damage cannot in general be sustained (*i*), but loss of business can be included (*k*) as where substantial compensation was awarded for the alteration of a street level (*l*). [517]

**Persons Entitled.**—It is to be noted that the section precludes the payment of compensation to a person in relation to any matter in which he is himself in default. A person who sold meat which was in fact unsound, although he was not aware of it and could not have detected the unsoundness by any reasonable examination, was held by the Court of Appeal to have been himself in default, so as to be unable to recover compensation in respect of proceedings unsuccessfully taken against him under sect. 117 of the P.H.A., 1875 (*m*). But where a local authority executed sanitary work on an owner's default, and also certain other work not specified in the notice which they had served upon him, and he claimed compensation for injury sustained in consequence of that other work, it was held that he was not "himself in default" in relation to that work (*n*). [518]

**Statutory Powers giving Rise to Compensation.**—Compensation is only to be paid for damage caused by acts authorised by the statute (*o*). A loss of school fees sustained by a master of a school in consequence of the council having ordered the school to be closed on an outbreak of measles was held to be not a subject for compensation because the order was in fact made under the Education Code of 1886 (*p*).

Some of the provisions of the P.H.A., 1875, and Acts read as one with that Act, under which claims to compensation most commonly arise, may now be referred to.

By sect. 16 of the Act of 1875 (*q*), a local authority may carry any sewer through, across or under any street, or place laid out or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier, into, through or under any lands whatsoever within their district. They may also exercise these powers outside their district for the purpose of the outfall or distribution of sewage. For damage done under this section, compensation must be paid under sect. 308. By sect. 54 (*r*), these powers are extended to the laying of water mains where the council are water undertakers.

It had been the practice to assess compensation in respect of the laying in land of sewers and water mains under sect. 308 of the Act

(*h*) *Utilley v. Todmorden Local Board* (1874), 44 L. J. (C. P.) 19; 11 Digest 291, 2198.

(*i*) *Herring v. Metropolitan Board of Works* (1865), 34 L. J. (M. C.) 224; 11 Digest 141, 268.

(*k*) *Lingé v. Christchurch Corpn.*, [1912] 3 K. B. 595; 11 Digest 141, 269; *R. v. Wallacey Board* (1869), L. R. 4 Q. B. 351; 26 Digest 335, 659.

(*l*) *Nutter v. Accrington Local Board* (1878), 4 Q. B. D. 375; 26 Digest 335, 660, and 21 Digest 335, 659.

(*m*) *Hobbs v. Winchester Corpns.*, [1910] 2 K. B. 471; 14 Digest 36, 64.

(*n*) *Place v. Rawtenstall Corpns.* (1916), 80 J. P. 433; 38 Digest 230, 604.

(*o*) *R. v. Darlington Local Board* (1865), 6 B. & S. 562; 33 Digest 13, 37; and see *ante*, p. 279.

(*p*) *Roberts v. Falmouth Sanitary Authority* (1888), 52 J. P. 741; 33 Digest 14, 42.

(*q*) 18 Statutes 633.

(*r*) *Ibid.*, 649.

of 1875, but in 1926 it was decided (*s*) that the carriage of a sewer through private land was tantamount to the acquisition by compulsion of an interest in land and that the compensation must, therefore, be assessed by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*t*).

A sewer may be carried above ground, but the amount of compensation would be fixed in proportion to the greater damage done (*u*). Entrances and manholes form part of a sewer and may be constructed on private land (*a*). Where a council in the execution of their statutory powers, diverted sewage from one drain or sewer into another already surcharged with sewage, and damage was occasioned to an occupier of premises, it was held not to be an act in the exercise of powers of the P.H.A., 1875, and therefore a subject for compensation under sect. 308, but the commission of a legal wrong in respect of which the occupier could maintain an action for the damage sustained (*b*). On the other hand, if by reason of the neglect of a council to enlarge a sewer so as to meet the increased demands on it caused by a growth of population, damage is caused by an overflow, an action against them does not lie and a claim for compensation under sect. 308 is admissible (*c*).

The fact that a sewer constructed through a person's land is connected with a pumping station, reservoir and outfall sewer on neighbouring land not belonging to him does not entitle him to claim compensation in respect of damage sustained by reason of the construction of these works on the neighbouring land, in addition to the compensation payable to him in respect of the construction of the sewer on his own land (*d*). The subject of compensation in regard to adjacent support for sewers and other sanitary works was dealt with by the P.H.A., 1875 (Support of Sewers) Amendment Act, 1883 (*e*), which by sect. 3 (4) directed that compensation should be paid in the same manner as in the Waterworks Clauses Act, 1847. [518A]

By sect. 3 (4) of the Alkali, etc. Works Regulation Act, 1906 (*f*), a sanitary authority may provide and maintain drains, at the expense of an owner of alkali works, for the purpose of separating acids and other substances from alkali waste or the drainage from the works. Compensation must be paid to anybody sustaining damage from the laying of a drain, and apparently it is intended that, in so far as the acquisition of an interest in land is not necessary, this should be payable under sect. 308 of the P.H.A., 1875. The compensation is to be repaid to the sanitary authority by the owner of the works.

Compensation is provided for in sect. 70 of the Towns Improvement Clauses Act, 1847 (*g*), where a local authority under sect. 69 of that Act remove projections on houses, lawfully existing, which cause an obstruction in the street. These provisions were extended to dangerous projections by sect. 24 of the P.H.A., 1925 (*h*).

(*s*) *Thurrock Grays and Tilbury Joint Sewerage Board v. Thames Land Co., Ltd.* (1925), 90 J. P. 1; Digest (Supp.).

(*t*) 2 Statutes 1176. See also the title COMPULSORY PURCHASE OF LAND.

(*u*) *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328; 41 Digest 22, 174.

(*a*) *Swanston v. Twickenham Local Board* (1879), 11 Ch. D. 838; 41 Digest 10, 66.

(*b*) *Dent v. Bournemouth Corpn.* (1897), 66 L. J. (Q. B.) 395; 41 Digest 30, 225.

(*c*) *Hesketh v. Birmingham Corpns.*, [1924] 1 K. B. 260; 38 Digest 48, 280.

(*d*) *Horton v. Cokewin Bay U.D.C.*, [1908] 1 K. B. 327; 11 Digest 135, 223.

(*e*) 13 Statutes 798.

(*f*) *Ibid.*, 895.

(*g*) *Ibid.*, 558.

(*h*) *Ibid.*, 1123. An adoptive provision.

As to new streets, by sect. 17 of the P.H.A. Amendment Act, 1907 (*i*), a council have power, on the deposit of plans and sections, to vary the position, direction or termination or level of a new street, and by sect. 28 of that Act (*k*) to remove, appropriate, use and dispose of builders' materials in any street at the time of the execution of any work, if the owner should neglect to remove them. Compensation is to be paid for the value of the materials, and any dispute as to their value is to be settled in the same way as compensation under the Act of 1875, *i.e.* by arbitration.

By sect. 155 of the P.H.A., 1875 (*l*), as to the regulation of the building line on rebuilding, compensation is to be offered, and the amount fixed, if there is a dispute, by arbitration under sects. 179 and 180 of that Act, but under sect. 5 of the Roads Improvement Act, 1925 (*m*), and sect. 33 of the P.H.A., 1925 (*n*), as to the prescription of general building lines and improvement lines, compensation is to be assessed by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*o*).

In the case of *Durrant v. Branksome U.D.C.* (*p*), it was assumed that compensation is payable under sect. 308 of the Act of 1875 for damage caused by the discharge of silt by a sewer into a water-course.

It has already been mentioned (*q*), that it had been decided that work done by a borough council or U.D.C. under the Highway Acts, as surveyor of highways was not done in the execution of any power of the Act of 1875, so as to give a right to compensation under sect. 308. But by sect. 39 of the L.G.A., 1929 (*r*), sect. 308 is to apply in any case in which a public utility undertaking sustains damage by the exercise by a county council, in relation to any road vested in them by Part III. of the Act of 1929, of functions formerly only exercisable by district councils under the powers of the P.H.A., 1875, as if for the reference in sect. 308 to a local authority there were substituted a reference to the county council, and as if the function had been exercised under the powers of the Act of 1875. Public utility undertakings within sect. 39 of the Act of 1929 are any company or authority which carry on a gas, water, hydraulic power, electricity, tramway, light railway or trolley vehicle undertaking (*s*). The object of this provision was to prevent a county council from enjoying a more favourable position than that of the borough or district council from whom the road was transferred. The section has been carefully drawn so as to restrict it to functions which were formerly exercisable under the P.H.A., 1875, and so to avoid conflict with the decisions alluded to at the opening of this paragraph. [519]

Enactments under which compensation must be paid on measures taken to prevent the spread of infectious disease are contained in various statutes. By sect. 121 of the P.H.A., 1875 (*t*), the council may direct the destruction, and give compensation for the destruction of infected bedding, clothing or other articles. It follows that the owner

(*i*) 13 Statutes 916. This section only applies where it has been put in force by an order of the M. of H.

(*k*) *Ibid.*, 922. This section must also be put in force by order.

(*l*) *Ibid.*, 689.

(*m*) 9 Statutes 223.

(*n*) 13 Statutes 1128. An adoptive provision.

(*o*) 2 Statutes 1176.

(*p*) [1897] 2 Ch. 291; 38 Digest 56, 327.

(*g*) See *ante*, p. 279.

(*r*) 10 Statutes 913.

(*s*) S. 39 (2). *Ibid.*

(*t*) 13 Statutes 675.

will receive "full" compensation, and must not be in default (*v*). The direction must be a direction of the council, and where a sanitary inspector, by direction only of the M.O.H. destroyed infected articles, the owner was held not to be entitled to compensation (*a*). By sect. 6 of the Infectious Disease (Prevention) Act, 1890 (*b*), where damage is done by the disinfection of articles, the owner is to be compensated for "unnecessary" damage, and the amount is to be recoverable in, and in the case of dispute settled by, a court of summary jurisdiction. By sect. 10 of the P.H.A., Amendment Act, 1907 (*c*), compensation to be paid under that Act is in case of dispute to be ascertained in the same manner as in the P.H.A., 1875, that is as in sects. 179-181. By sect. 56 of the Act of 1907 (*d*), filthy and dangerous articles are to be cleansed, purified or destroyed by the council, on a certificate of the M.O.H., and "reasonable" compensation is to be paid if the condition of the article is not attributable to the act or default of the owner. By sect. 66 (*e*), where premises are cleansed and disinfected, compensation under sect. 308 must be paid for "unnecessary" damage, but if any article is destroyed, the council must compensate the owner, and the amount is recoverable in a court of summary jurisdiction. Here the question of default is not mentioned.

By sect. 45 of the P.H.A., 1925 (*f*), reasonable compensation is to be paid where articles infested with vermin are destroyed, and by sect. 59 of the same Act (*g*) compensation must be paid to the keeper of a common lodging-house for loss caused by the closing of the house on account of infectious disease. Compensation for the seizure of food as unsound under sect. 117 of the P.H.A., 1875 (*h*), has been mentioned already, together with some of the decisions as to unsound meat (*i*). [520]

Sect. 39 of the P.H.A., 1875 (*k*), enables local authorities to provide lavatories in proper and convenient positions. This provision did not enable them, however, to construct a lavatory in the subsoil of a highway which was vested in them, without the consent of the owner of the subsoil (*l*). But by sect. 47 of the P.H.A. Amendment Act, 1907 (*m*), they were given power to provide lavatories "in or under" any street which is repairable by the council.

Compensation under sect. 308 must be paid where damage is caused by the exercise of these powers of providing lavatories, but an injunction will be granted in respect of any nuisance caused, if the council do not act with reasonable care in selecting a proper site for a lavatory (*n*).

(u) See *Foster v. East Westmoreland R.D.C.* (1903), 68 J. P. 103; a county court decision.

(a) *Garlick v. Knottingley U.D.C.* (1904), 68 J. P. 494; 38 Digest 201, 371.

(b) 13 Statutes 819. In force only in a borough or district for which it has been adopted by the council.

(c) 13 Statutes 914.

(d) *Ibid.*, 932. In force only in a borough or district to which it has been applied by order of the M. of H.

(e) *Ibid.*, 985. In force only in a borough or district to which it has been applied by order of the M. of H.

(f) *Ibid.*, 1134. (Adoptive.)

(g) *Ibid.*, 1140.

(h) *Ibid.*, 673.

(i) *Ante*, p. 280.

(k) 13 Statutes 642.

(l) See *Tunbridge Wells Corp. v. Baird*, [1896] A. C. 434; 38 Digest 230, 607.

(m) 13 Statutes 929. In force only in a borough or urban district to which it has been applied by order of the M. of H.

(n) *Sellers v. Matlock Bath U.D.C.* (1885), 14 Q. B. D. 928; 38 Digest 32, 183; *Mayo v. Seaton U.D.C.* (1903), 68 J. P. 7; 38 Digest 21, 118.

It will be seen that notwithstanding the generality of sect. 308 of the P.H.A., 1875, several of the enactments which have been referred to expressly provide for the payment by the council of compensation for damage. In some instances, this may be due to the desirability of negativing the doctrine that damage arising through the negligent performance by a council of a statutory power does not create a case for compensation under sect. 308 (*o*), but in other instances it would almost seem as if the legislature had been oblivious of the section, or more probably in the case of amending P.H.As., not alive to the extension of sect. 308 made by the direction that the amending Act should be read with the P.H.A., 1875, as one Act. [521]

**London.**—Sect. 308 of the P.H.A., 1875, does not apply to London, but there are numerous statutory provisions under which compensation may be recovered for damage suffered in the course of the exercise by a local authority in London of its statutory powers. Thus under the Metropolis Management Act, 1855, sects. 69, 135 (*p*), compensation is directed to be made for any damage done in the construction or alteration of sewers, and under the Metropolis Management Amendment Act, 1862, sect. 35 (*q*), a railway or canal company may recover compensation for injury to their property. Under the P.H. (London) Act, 1891, sect. 43 (2) (*r*), compensation may be recovered against a sanitary authority which in the course of its duty to deal with offensive drains, ditches, etc., damages any ancient mill or injuriously affects any right to the use of water; and under sect. 61 (2) of that Act (*s*) compensation is payable in respect of unnecessary damage to, or destruction of, bedding or clothing which has been taken by a sanitary authority for purposes of disinfection.

By sect. 225 of the Metropolis Management Act, 1855 (*t*), where any damage is directed by the Act to be ascertained or recovered in a summary manner or the amount of any damage is directed to be paid and the method of ascertaining the amount or enforcing payment is not provided for, such amount is, in case of dispute, to be ascertained by and recovered before two justices; and the amount of compensation to be made by a local authority is, unless otherwise provided, to be settled, in case of dispute, by and recovered before two justices, unless the amount exceeds £50, when it is to be settled by arbitration. Sect. 226 of the Act deals with the procedure to be followed before the justices. [522]

(*o*) See *ante*, p. 279.

(*q*) *Ibid.*, 973.

(*s*) *Ibid.*, 1064.

(*p*) 11 Statutes 896, 917.

(*r*) *Ibid.*, 1052.

(*t*) *Ibid.*, 939.

## DAMAGES

*See ACTIONS BY AND AGAINST LOCAL AUTHORITIES.*

## DANCING

*See MUSIC, SINGING AND DANCING.*

# DANGEROUS BUILDINGS

|  | PAGE |                                | PAGE |
|--|------|--------------------------------|------|
| INTRODUCTORY - - - - -                         | 286  | LONDON - - - - -               | 288  |
| TOWNS IMPROVEMENT CLAUSES                      |      | Introductory - - - - -         | 288  |
| ACT, 1847 - - - - -                            | 286  | Dangerous Structures - - - - - | 289  |
| Who may exercise the powers - - - - -          | 286  | Neglected Structures - - - - - | 290  |
| Conditions to which the powers apply - - - - - | 287  | Expenses - - - - -             | 290  |
| Action to be taken - - - - -                   | 287  | Recovery of Expenses - - - - - | 291  |
| Expenses - - - - -                             | 288  |                                |      |
| Recovery of Expenses - - - - -                 | 288  |                                |      |

*See also titles :*

BUILDING ;  
BUILDING BYE-LAWS ;  
HIGHWAY NUISANCES ;  
\*INSANITARY HOUSES ;  
LONDON BUILDING ;

RECONDITIONING OF HOUSES ;  
ROAD PROTECTION ;  
SAFETY PROVISIONS OF BUILDINGS  
AND STANDS.

\* Deals with closing orders which are omitted from this title as involving a different procedure directed to objects not altogether coincident with that of the procedure described in this title.

**Introductory.**—At common law an erection or excavation near to a highway which might be dangerous to persons using the highway with ordinary care might be a public nuisance (*a*). Subsequently the legislature became concerned with the safety of passengers on roads from this point of view, and a series of powers, some mainly and some solely with this object in view, have been conferred upon local authorities. This article does not deal with this subject, which is treated under the title ROAD PROTECTION. Reference may also be made to the title HIGHWAY NUISANCES. The provisions of P.H.A. Amendment Act, 1907, sect. 30, as to protection of passengers are also summarised in Vol. II, at p. 307.

Sects. 75 to 78 of the Towns Improvement Clauses Act, 1847 (*b*), are largely concerned with the safety of passengers and were at first administered so much from this point of view that as late as 1896 it was possible to argue that a wall which was admittedly not dangerous to passengers on a road, but only to persons in neighbouring private gardens, could not be dealt with under these sections (*c*). It was, however, decided in that case that the application of these sections was not confined to securing the safety of passengers. The code in force in London, namely Part X. of the London Building Act, 1930 (*d*), and its predecessor Part IX. of the London Building Act, 1894 (*e*), do not in terms refer to the safety of passengers and are also more elaborate than sects. 75 to 78 of the Act of 1847. For the latter reason there are more decided cases on the London code than on the Act of 1847. [523]

**Towns Improvement Clauses Act, 1847, sects. 75 to 78(*f*).** *Who may exercise the powers.*—This code is incorporated with the P.H.A.,

(*a*) *R. v. Watts* (1703), 1 Salk. 357; 26 Digest 433, 1517.

(*b*) 13 Statutes 554.

(*c*) *Mellow v. Warden* (1896), 40 Sol. Jo. 567; 38 Digest 189, 277.

(*d*) 23 Statutes 287.

(*e*) 11 Statutes 1176.

(*f*) 13 Statutes 554.

1875, by sect. 160 of that Act (*g*). Sect. 160 only applies the code specifically to county boroughs, non-county boroughs, and urban districts (*h*). By sect. 276 of the Act of 1875 (*i*), and sect. 272 of the L.G.A., 1933 (*k*), the M. of H. may invest a R.D.C. with these powers. A general direction to the surveyor of the council to exercise the powers conferred by sects. 75 to 78 is permissible, and it is not necessary for the council to have actual knowledge of any particular exercise of these powers under such a direction (*l*). [524]

*The Conditions to which the powers apply.*—Sect. 75 defines the conditions to which the powers apply, as any building or wall or anything affixed thereon within the council's district (*m*) deemed by the surveyor to be in a ruinous state and dangerous to passengers or to the occupiers of neighbouring buildings. It has already been pointed out that at one time it was erroneously thought that the consideration of the safety of passengers governed the whole section. In *Mellor v. Warden* (*n*) it was decided that a wall admittedly not dangerous to road passengers or to neighbouring buildings, but only to the occupiers of neighbouring buildings when using their gardens, could be dealt with under the Act of 1847. It may also be mentioned that the fact that the council have taken measures to secure by the erection of hoardings that there shall be no danger to passengers does not prevent the building or wall from being dangerous within the meaning of the section (*o*). [524A]

*The Action to be taken.*—By sect. 75 the surveyor is immediately to cause a proper hoard or fence to be put up for the protection of passengers, and may enter on land for the purpose (*p*). The erection of such a fence is not a condition precedent to the institution of proceedings (*q*). The surveyor is also to give notice in writing, requiring that the building or wall shall forthwith be taken down, secured, or repaired as the case may be. This notice is to be given both to the owner (*r*), if he be known and resident within the council's district, and to the occupier. The notice to the occupier may be given by putting it on the door or some other conspicuous part of the premises. If the owner or occupier do not begin to carry out the requirements of the notice within three days after the notice has been given or put up and does not complete those requirements as speedily as possible, the surveyor may make a complaint. The justices may then order the owner, or in his default the occupier, to carry out the works to the

(*g*) 13 Statutes 691.

(*h*) See the definition of the term "urban district" in ss. 5, 6 of the P.H.A., 1875; 13 Statutes 627.

(*i*) 13 Statutes 741.

(*k*) 26 Statutes 451.

(*l*) *L.C.C. v. Hobbs* (1896), 61 J. P. 85; 34 Digest 591, 111. The decision in this case was concerned with Part IX. of the London Building Act, 1894 (11 Statutes 1176), but the principle would seem to apply to the Act of 1847.

(*m*) S. 316 of P.H.A., 1875; 13 Statutes 757.

(*n*) (1896), 40 Sol. Jo. 567; 38 Digest 189, 277.

(*o*) *L.C.C. v. Jones*, [1912] 2 K. B. 504; 34 Digest 591, 113. The decision in this case was concerned with Part IX. of the London Building Act, 1894 (11 Statutes 1176), but the principle would seem to apply to the Act of 1847.

(*p*) *Mellor v. Warden* (1896), 40 Sol. Jo. 567; 38 Digest 189, 277.

(*q*) *R. v. Tyrone JJ.*, [1928] N. I. 103; Digest (Supp.).

(*r*) "Owner," by s. 4 of the P.H.A., 1875 (13 Statutes 625), means the person for the time being receiving the rack-rent of the premises, whether on his own account or as an agent or trustee, or who would receive the rack-rent if the premises were let as one. This definition is applicable: *Sale v. Phillips*, [1894] 1 Q. B. 349; 38 Digest 227, 581.

satisfaction of the surveyor on any part of the building or wall that appears to them to be dangerous, within a time to be fixed by them. If default is made in complying with the order the council may do the work themselves.

If no owner or occupier can be found on whom to serve the order the council may do the work themselves.

Any materials removed by the council in pulling down any part of a building or wall under the powers referred to above may be sold by the council (s). (As to the proceeds of the sale, see *infra*, "Recovery of Expenses.") [525]

*Expenses.*—All the expenses of erecting the fence in the first place and of carrying out the works are to be paid by the owner (t). The expenses recoverable may be in excess of the market price of the work if they are incurred under a contract by the council which is not shown to be unreasonable (u). [526]

*Recovery of Expenses.*—Any materials removed by the council in pulling down any part of a building or wall under the powers above referred to may be sold, and the proceeds of sale applied in satisfaction of the council's expenses, but any overplus of the proceeds of sale is to be restored to the owner on demand (a). Besides this the council have the following remedies. If the owner can be found within the council's district and if, on demand, he does not pay the expenses, then the expenses may be levied by distress (b). If the owner cannot be found within the district or no sufficient distress within the district can be made, the council may take the building or land themselves (c). Before doing so they must post a notice in a conspicuous place on the building, or the land where the building stood, and allow twenty-eight days to elapse from the posting of the notice. After the expiry of the twenty-eight days without payment or tender of their expenses, they may take the building or land, making compensation therefor to the owner. The compensation is to be made in the manner provided by sects. 18 *et seq.* of the Lands Clauses Consolidation Act, 1845 (d). The council may deduct the expenses from the compensation, and thereupon may sell or otherwise dispose of the building or land. [527]

**London.** *Introductory.*—Part X. of the London Building Act, 1930 (e) (comprising sects. 128 to 142 of the Act), which replaced the repealed Part IX. of the London Building Act, 1894 (f), is, like its predecessor, a more elaborate code than that of the Act of 1847. It deals with both dangerous and neglected structures—not only dangerous buildings and walls—and contains certain powers to deal with the inhabitants. The authorities on whom the powers of Part X. with reference to dangerous structures are conferred, are the Common Council in the City and the L.C.C. in the rest of London, and with regard to neglected structures are the L.C.C. (g). The L.C.C. need not have actual knowledge of proceedings under the Act, but may give a general

(s) S. 78; 13 Statutes 556.

(t) S. 75.

(u) *Debenham v. Metropolitan Board of Works* (1880), 6 Q. B. D. 112; 38 Digest 189, 272. The decision was concerned with the Metropolitan Building Act, 1855, but the principle would seem to apply to the Act of 1847.

(a) S. 78.

(b) S. 76.

(c) S. 77.

(d) 2 Statutes 1120, and see also the Acquisition of Land (Assessment of Compensation) Act, 1919; 2 Statutes 1176.

(e) 23 Statutes 287.

(f) 11 Statutes 1176.

(g) Ss. 5, 130; 23 Statutes 220, 288.

authority to an officer of the L.C.C. to carry through the proceedings under this Part of the Act (*h*). By sect. 128, the term "district surveyor" on which officer certain duties are cast by the Act, includes any competent surveyor required to make a survey of the structure in question by the council. [528]

*Dangerous Structures (i).*—When it comes to the knowledge of the council (*k*) that a structure (*l*) is in a dangerous state (it is the duty of the district surveyor to convey any relevant information to the council), the council must require the district surveyor or some other competent surveyor to make a survey of the structure (*m*). The district surveyor may enter to make the survey, and upon completing it is to certify his opinion to the council (*n*). If the certificate is to the effect that the structure is dangerous the council may secure it by shoring it up or otherwise, and may erect a fence for the protection of passengers (*o*), and must serve a notice on the owner (*p*) or occupier (*p*) requiring him forthwith to take it down, secure it, or repair it (*o*). The notice may be in general terms (*q*). It may be served on the owner or occupier by delivering a copy to some person on the premises, or if no one is there, by fixing it in a conspicuous place on the premises. If the owner's name and address are known to the council they must send a copy of the notice to him by registered post. In such a notice it is sufficient to address it to the "owner" or the "occupier" of the premises (*r*). In securing the structure the council may disturb the pavement of a street and are not liable to reinstate it (*s*).

If the owner or occupier on whom the notice is served fails to comply with it as speedily as possible, the council may make complaint to a Petty Sessional Court (*t*). If the court thinks that the structure is in such a dangerous condition as to require immediate treatment, it may make whatever order it thinks fit with regard to taking it down, repairing, or securing it (*u*).

Subject to the right of the court to make orders where it considers immediate treatment necessary, there are two methods of settling these disputes between the council and the owner—by arbitration as provided in the Act, and by the Petty Sessional Court. The owner, if he disputes the necessity of any of the requisitions comprised in the notice, may,

(*h*) *L.C.C. v. Hobbs* (1896), 61 J. P. 85; 34 Digest 591, *III*.

(*i*) In *L.C.C. v. Herring*, [1894] 2 Q. B. 522 (34 Digest 591, *II*2) it was decided that the word "dangerous" was not confined to passengers on a road, and in *L.C.C. v. Jones*, [1912] 2 K. B. 504, it was decided that it was not limited to persons having a legal right to be in a place within the ambit of the danger.

(*k*) The knowledge need not be the actual knowledge of the council themselves; see *L.C.C. v. Hobbs*, *supra*.

(*l*) "Structure" by s. 128 includes any building, wall or other structure and anything affixed to or projecting therefrom.

(*m*) S. 129 (1), (2); 23 Statutes 288.

(*n*) Ss. 129 (3), 131.

(*o*) S. 132.

(*p*) Owner and occupier are defined in s. 5 of the Act (23 Statutes 217). "Owner" includes every person in possession or receipt either of the whole or any part of the rents or profits of any land or tenement or in the occupation of any land or tenement otherwise than as a tenant from year to year or for any less term or a tenant at will. "Occupier" does not include a lodger.

(*q*) *R. v. Tyrone JJ.*, [1928] N. I. 103; Digest (Supp.). The principle of this decision would seem to apply to the Act of 1930, though it dealt with the Act of 1847.

(*r*) S. 210; 23 Statutes 316.

(*s*) *Crisp v. L.C.C.*, [1899] 1 Q. B. 720; 38 Digest 189, 274.

(*t*) S. 133 (1); 23 Statutes 289.

(*u*) S. 134.

within seven days of the service of the notice upon himself require that the dispute shall be referred to arbitration (*a*). In that case he may appoint an independent surveyor to report on the condition of the structure, in conjunction with the district surveyor, within seven days of the receipt by the council of notice of the appointment of the owner's surveyor (*b*). Before, however, the owner's surveyor and the district surveyor enter on the discussion of the dispute, they are to appoint a third surveyor to act as arbitrator. If they cannot agree on an appointment, a Petty Sessional Court may make the appointment on the application of either of them (*b*). All questions which cannot be agreed between the district surveyor and the owner's surveyor are to be referred for final decision to the arbitrator, who is to make his award within fourteen days of any such reference to him (*c*). The notice served by the council is to be discharged, amended, or confirmed in accordance with the decision of the two surveyors or the arbitrator (*d*).

If the owner does not require arbitration in the manner provided in the Act, a Petty Sessional Court, on complaint by the council, may order the owner to deal with the structure or any part of it to the satisfaction of the district surveyor, and must by the order fix a time within which it is to be done (*e*). If the work is not done within the time fixed by the order, the council may do whatever work is requisite themselves (*e*). [529]

If the district surveyor certifies a structure as being dangerous to its inmates, the council may apply to a Petty Sessional Court to order the removal of the inmates. The court, if it is satisfied of the correctness of the certificate, may order the removal of the inmates by a police officer. If they have no other abode the police officer may require them to be received into the workhouse (*f*).

For expenses and their recovery, see *post*. [530]

*Neglected Structures* (*g*).—A neglected structure is defined as being a structure that is ruinous or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property in or the inhabitants of the neighbourhood (*h*). On complaint by the council a Petty Sessional Court may order the owner (*i*) of a neglected structure to take down, repair, or rebuild it or any part of it, or to fence in the ground or any part of it on which it stands, or otherwise to put the structure or any part of it into good repair and condition to the satisfaction of the council within a time to be fixed by the order (*h*). If the order is not obeyed the council may execute it and may remove the materials of any part of the structure ordered to be taken down (*k*). [531]

*Expenses.*—(1) In an arbitration under sect. 133, the costs of and incident to the determination by the surveyors or the arbitrator of the question in dispute are to be paid by the losing party unless the arbitrator otherwise directs (*l*). (2) All expenses incurred by the council in obtaining an order as to a dangerous structure and of carrying the

(*a*) S. 133 (1); 23 Statutes 289.

(*b*) S. 133 (2).

(*c*) S. 133 (2).

(*d*) S. 133 (3).

(*e*) S. 133 (1).

(*f*) S. 139.

(*g*) S. 140. For the definition of a structure, see s. 128 and note (*l*), *ante*, p. 289.

(*h*) S. 140 (1); 23 Statutes 291.

(*i*) For definition of "owner," see s. 5 and note (*p*), *ante*, p. 289.

(*k*) S. 140 (2), (3).

(*l*) S. 133 (4).

order into effect are to be paid by the owner (*m*). (3) Where the council obtain an order as to a neglected structure the court may make an order for the costs up to the time of the hearing (*n*). (4) All expenses incurred by the council in relation to a neglected structure must be paid by the owner (*o*). (5) The Act prescribes certain fees as being payable by the owner of a dangerous or neglected structure to the council (*p*). [532]

*Recovery of Expenses.*—In the cases both of dangerous and neglected structures the council may sell the structure : in the case of a dangerous structure after giving the owner three months' notice of their intention to do so (*q*), and in the case of a neglected structure, if the order directed the taking down of any part of the structure and the council in executing the order have removed the materials, if their expenses are not paid to them within fourteen days after the removal (*r*). In either case, the council, after deducting their expenses of the sale, must pay any surplus to the owner on demand (*s*). Again, in either case the council, if they do not sell the materials or if the proceeds of the sale are insufficient, may recover the whole (or the balance) together with costs in a summary manner (*t*). The Act contains further powers to enforce payment in sects. 137 and 141 (*u*). Sect. 137 provides that, in the case of a dangerous structure, where the proceeds of sale of materials are insufficient, no part of the land upon which the structure stands or stood shall be built upon until after the balance has been paid to the council. Sect. 141 applies both to dangerous and neglected structures. It provides that where the council have incurred any relevant expenses and have not been paid nor have recovered them, they may make complaint to a Petty Sessional Court. The court may make an order fixing the amount of the expenses and the costs of the proceedings before them, and directing that until after payment to the council of the amount so fixed no part of the land upon which the structure stands or stood shall be built upon, and that no part of the structure if repaired or rebuilt shall be let for occupation. Such orders are to be made in duplicate, one copy to be retained by the proper officer of the court, and one to be kept at the County Hall. The council are to keep a register of these orders at the County Hall, which is to be open for inspection by all persons. Orders not entered in the register within ten days from their making are to cease to be of any force, and such orders unless and until entered do not affect the property. [533]

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(*m*) S. 135 (1); 23 Statutes 289.      (*n*) S. 140 (1).

(*o*) S. 140 (4).

(*p*) S. 142 and Fourth Schedule ; and as to fees payable by the council to the district surveyor, see s. 172 and Part II. of the Fifth Schedule. These latter fees only apply to dangerous structures. They are deemed to be expenses incurred by the council in the matter of the structure and are recoverable from the owner.

(*q*) S. 135 (2).

(*s*) Ss. 135 (2), 140 (4).

(*u*) 23 Statutes 290, 291.

(*r*) S. 140 (3).

(*t*) Ss. 138, 140 (4).

## DANGEROUS INDUSTRIES

*See ALKALI, ETC., WORKS.*

## DAY NURSERIES

|                            | PAGE |                           | PAGE |
|----------------------------|------|---------------------------|------|
| DEFINITION - - - - -       | 292  | NATIONAL SOCIETY OF DAY   |      |
| HISTORY - - - - -          | 292  | NURSERIES - - - - -       | 293  |
| LEGISLATION AND GOVERNMENT |      | CONDUCT - - - - -         | 293  |
| RECOGNITION - - - - -      | 292  | STAFFING - - - - -        | 293  |
|                            |      | GENERAL REMARKS - - - - - | 293  |

*See also titles : INFANTS, CHILDREN AND YOUNG PERSONS ;  
MATERNITY AND CHILD WELFARE.*

**Definition.**—A day nursery is an institution provided, either by a voluntary association or by a local authority, for the care and supervision of children under school age (1) whose mothers are compelled by circumstances to go out to work during the day and cannot make other suitable arrangements for the care of their children, or (2) whose home conditions are such that their health would benefit by the daily supervision provided at the nurseries. [534]

**History.**—Crèches (or day nurseries, as they are called in England) were started in France in the eighteenth century ; their object was to enable a child to receive some supervision and care from a motherly woman, in more or less suitable surroundings, while the mother went out to work. It was not until about eighty years later that day nurseries were opened in England. During the late war, day nurseries sprang up in many parts of the country for the assistance of mothers who were munition workers. At the end of 1933, there were in England and Wales eighteen day nurseries provided by local authorities and eighty-two by voluntary associations, in all furnishing accommodation for 3,550 children. [535]

**Legislation and Government Recognition.**—Day nurseries may be established by maternity and child welfare authorities under sect. 1 of the Maternity and Child Welfare Act, 1918 (a), which allows any local authority within the meaning of the Notification of Births Act, 1907 (b), to make such arrangements as may be sanctioned by the M. of H. for attending to the health of children who have not attained the age of five years and are not being educated in schools recognised by the

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(a) 11 Statutes 742.

(b) 15 Statutes 765. These authorities are the following : county councils, county borough councils, borough councils, U.D.Cs. and R.D.Cs., metropolitan borough councils and the common council of the City of London. In administrative counties there is no general rule as to whether the county council or the council of the county district is in any individual case the authority. The Act of 1907 was adoptive, and the Notification of Births (Extension) Act, 1915 (15 Statutes 767) by s. 1 extended the Act of 1907 to every area in which it was not already in force. By proviso (b) to s. 2 (4) of the Act of 1907, as extended by s. 61 of the L.G.A., 1929 (10 Statutes 925), the M. of H. may make orders transferring these functions from the council of a county district to the council of the county or *vice versa*.

Board of Education. The establishment of crèches and day nurseries was recognised by the Local Government Board as admissible in their circular of August 9, 1918, issued on the passing of the Act of 1918 (c).

In 1918, the M. of H. recognised the value of the work by giving a grant of approximately 50 per cent. of the approved expenditure of each nursery, with a larger grant for initial expenses. The L.G.A., 1929, abolished percentage grants, which were replaced by block grants to local authorities. With this change, local authorities are now responsible for paying to voluntary day nurseries the grants previously paid by the M. of H. [536]

**National Society of Day Nurseries.**—The National Society of Day Nurseries (d) promotes the interests of its members. The majority of day nurseries in this country are affiliated to the society, and they give training to girls who wish to become nurses in nurseries and are anxious to take up hospital work later. The training lasts from one to two years, and at the end probationers, if qualified, receive certificates of proficiency. [537]

**Conduct.**—The standard of conduct of day nurseries has risen materially. Increasing attention is now given to instruction of mothers, to a hygienic routine of feeding, sleeping and play out of doors, and to the training of the children in good social and physical habits. Institutionalism is avoided, and the children are treated as individuals. In short, conditions approximate as nearly as may be to those of a happy domestic circle in which regard is had to health, happiness and mutual helpfulness. Several of the more recently established day nurseries are accommodated in premises built for the purpose, but the majority are adapted dwelling-houses. As day nurseries must be within reasonable reach of the homes of the children, it is often impossible to get the kind of accommodation or the garden space which is desirable. [538]

**Staffing.**—The staffing of a day nursery varies in different districts, but usually comprises a fully trained matron, a staff nurse and three or four probationers or students; in many cases a nursery school teacher or kindergarten teacher is in attendance. The children are regularly inspected by a doctor. The number of children in a nursery varies from twenty-five to one hundred, and they are given three meals a day. The fees for the children vary according to the locality in which the nursery is situated. [539]

**General Remarks.**—During the early, impressionable years, children attending day nurseries have the advantages of skilled supervision, medical inspection, training in regular habits, proper feeding and hygienic and pleasant surroundings. The benefit conferred by these advantages is shown by the claim of many elementary school teachers to be able to pick out on inspection day-nursery children. Much valuable time in training such children to be good citizens is saved, for the foundations have already been well laid. [540]

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(c) Printed on pp. 3548—3557 of Lumley's Public Health, 10th ed.

(d) Address, 117, Piccadilly, London, W.1.

## DEAD BODIES

*See CORPSES.*

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## DEAF CHILDREN

*See BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.*

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## DEATH CERTIFICATION

*See BURIALS AND BURIAL GROUNDS.*

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## DEATHS, REGISTRAR OF

*See REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES.*

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## DEBENTURE STOCK

*See STOCK.*

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## DEBENTURES

*See BONDS ; LOCAL LOANS.*

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## DECLARATION OF ACCEPTANCE

*See ACCEPTANCE OF OFFICE.*

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## DEDICATION AND ADOPTION OF HIGHWAYS

|                          | <small>PAGE</small> |                                | <small>PAGE</small> |
|--------------------------|---------------------|--------------------------------|---------------------|
| GENERAL CONSIDERATIONS - | -- 295              | EXISTING ROADS -- -- --        | 303                 |
| THEORY OF DEDICATION -   | -- 296              | RESTRICTED DEDICATION -- -- -- | 303                 |
| WHO MAY DEDICATE - -     | -- 297              | CREATION OF HIGHWAYS BY        |                     |
| EVIDENCE OF DEDICATION - | -- 299              | STATUTE -- -- --               | 304                 |

*See also titles : HIGHWAY AUTHORITIES ;  
REPAIR OF ROADS.  
ROAD TRAFFIC ;  
ROADS OR STREETS.\**

\* This article contains a complete list of the numerous titles dealing with this subject with some description of their scope and interconnection.

**General Considerations.**—A claim to a public right of way may depend upon statute, prescription or dedication and acceptance. With a claim under statute this article is not concerned. Acquisition by prescription has been the subject of much discussion, and it has been argued with some force that a highway cannot be so acquired. Be this as it may, a short examination of this subject is instructive in that acquisition by dedication and acceptance has assumed a prominent and important place in the law as a direct result of the difficulties surrounding the question of acquisition by prescription.

There is the high authority of Lord BLACKBURN for stating that a highway may be acquired by prescription (*a*). It is argued that this cannot be correct in that in such a case there can be no dominant tenement which any claim by prescription presupposes. If the statement be accepted, it must be borne in mind that the Prescription Act, 1832 (*b*), has no reference to public rights of way, which can therefore only be acquired under the Common Law. If, therefore, it is desired to prove the acquisition of a right at Common Law, it is necessary to go back to A.D. 1189, the time of Richard I.—a time before legal memory (*c*). A claim of this nature may easily be defeated by proof of the origin of the highway since that date. It is because of these doubts as to the law and because of difficulties in its application, that prescription is not in practice relied upon, but resort is had to the theory of a presumed dedication of the highway to the public by the landowner. **[541]**

Apart from the recent Rights of Way Act, 1932 (*d*), the law as to the dedication of highways must be obtained from case law. Sect. 23 of the Highway Act, 1835 (*e*), requires certain conditions to be observed before a highway becomes one which the highway authority are liable to keep in repair, but this question is distinct from the dedication of a

(*a*) *Mann v. Brodie* (1885), 10 App. Cas. 378, at p. 385 ; 26 Digest 281, 177.

(*b*) 5 Statutes 823.

(*c*) *A.-G. v. Esher Linoleum Co., Ltd.*, [1901] 2 Ch. 650, *per Buckley, J.* ; 26 Digest 281, 178.

(*d*) 25 Statutes 191.

(*e*) 9 Statutes 59.

way as a highway. A large number of highways exist in this country for the repair of which no highway authority or owner of land has any responsibility. [542]

**Theory of Dedication.**—There must be dedication of the land to the public for the purpose of a highway and also an acceptance by the public of the land for such a purpose. In any particular case it is a question of fact and not of law whether there has been dedication and acceptance (f). In most cases dedication is proved by user. But user is only evidence to prove dedication : it is not user but dedication which constitutes the highway ; therefore what has to be investigated is whether the owner of the soil did or did not dedicate certain land to the use of the public (g). For example, where there is a certain amount of land laid out for the purpose of traffic, even though it be private traffic, and there is along the same line a right of public footway, in the absence of evidence to the contrary it would be presumed that the landowner had dedicated to the public for the purpose of such right of traffic as they had, namely, as a footway, all that land which he had in fact devoted to traffic (h). The application of these principles to the evidence in any particular case entails a close examination of much detail, and particularly where land is laid out for the erection of new houses and the construction of a new street (i).

It is necessary, therefore, to adduce some evidence which tends to show an intention on the part of the owner to dedicate the highway. This is called an *animus dedicandi* (k). It is sometimes possible to prove this intention by words or writing, but more probably an inference has to be drawn from the facts. All the surrounding circumstances must be examined in conjunction with the acts and behaviour of the landowner (l). [543]

It must not, however, be assumed that an inference of this nature can be lightly drawn. The ease with which opinions may be formed on such matters renders it essential that the jury (if there be one) be carefully directed as to their duty on this aspect of the case. It has been said that the jury ought to be most carefully warned not to do an injustice under the idea that they are vindicating a public right. They should be solemnly told that nothing worse can happen in a free country than to force landowners to be churlish in conceding rights for fear that their indulgence may be abused, and to drive them to prevent the enjoyment by the public of privileges which, although they are matters of private property, naturally give pleasure to many others besides their owners (m).

Acceptance by the public does not require any formal act on the

(f) *R. v. Petrie* (1855), 4 E. & B. 737 ; 26 Digest 284, 187.

(g) *A.-G. v. Esher Linoleum Co., Ltd.*, [1901] 2 Ch. 650, per BUCKLEY, J. ; 26 Digest 281, 178.

(h) *Ibid.*

(i) *Kirby v. Paignton U.D.C.*, [1913] 1 Ch. 387 ; 26 Digest 297, 286 ; *Folkestone Corp. v. Brockman*, [1914] A. C. 338 ; 26 Digest 284, 189 ; *A.-G. v. Manchester Corpn.*, [1931] 1 Ch. 254 ; Digest (Supp.).

(k) *Simpson v. A.-G.*, [1904] A. C. 476, 493 ; 26 Digest 287, 196. See also *Poole v. Huskinson* (1843), 11 M. & W. 827 ; 26 Digest 286, 194 ; *Mann v. Brodie* (1885), 10 App. Cas. 378, at p. 385 ; 26 Digest 281, 177.

(l) *R. v. Petrie* (1855), 4 E. & B. 737 ; 26 Digest 284, 187 ; *R. v. Wright* (1832), 3 B. & Ad. 681 ; 26 Digest 283, 186 ; see also *A.-G. v. Watford R.D.C.*, [1912] 1 Ch. 417 ; 26 Digest 285, 192 ; *Shearburn v. Chertsey R.D.C.* (1914), 78 J. P. 289 ; 26 Digest 303, 345 ; *A.-G. v. Hemingway* (1916), 81 J. P. 112 ; 26 Digest 301, 316.

(m) *Blount v. Layard* (1888), [1891] 2 Ch. 681 n. ; quoted with approval in *Simpson v. A.-G.*, [1904] A. C. at p. 493 ; 26 Digest 287, 196.

part of any body or person (*n*). The evidence which in the majority of cases supports the inference that there has been acceptance, is unobstructed user by the public for a substantial period. Even where express dedication can be proved, it is still necessary to show that the highway was open to the public and used by them (*o*). [544]

**Who may Dedicate.**—The theory of dedication requires that the person who by inference is deemed to have dedicated the highway should be in law capable of so doing. This as a rule will mean that he should be the owner in fee simple and *sui juris*. Where a *prima facie* case of dedication is made out and it appears that there was an intention to dedicate, the burden of proving that the title to the land was such that there could be no such intention lies upon the defendant (*p*). It would not, for example, be sufficient to show that an owner could have had no intention to dedicate the highway to the public because an adjoining owner has a right of pre-emption over the land (*q*). The Crown may dedicate to the public a right of way over Crown lands. The proof of dedication is similar to that already described (*r*).

As respects settled land, a tenant for life is by sect. 56 (2) of the Settled Land Act, 1925 (*s*), placed in the same position as if he were absolute owner, in regard to the dedication of land for such public purposes as are mentioned in sub-sect. (1) of the section, which include the laying out of streets, roads, paths, squares, gardens or other open spaces. And by sect. 16 of the Universities and College Estates Act, 1925 (*t*), similar powers are conferred on the universities and colleges to which that Act applies (*u*). [545]

A lessee cannot dedicate land as a highway since he has only a limited interest. It can be done if the freeholder consents (*a*), but a doubt may arise as to whether the dedication is for the term of the lease only (*b*).

After evidence of public user it is for the freeholder to show that the land has been held under lease during the whole period (*c*), and his assent will be more easily presumed if it has been in the occupation of a series of tenants because at each change of tenancy he might have interfered (*d*). Where the land has been held under lease a still earlier

(*n*) *R. v. Leake Inhabitants* (1833), 5 B. & Ad. 469 ; 26 Digest 290, 225 ; *Roberts v. Hunt* (1850), 15 Q. B. 17 ; 26 Digest 362, 879.

(*o*) *Cubitt v. Maxse (Lady Caroline)* (1873), L. R. 8 C. P. 704, at p. 715 ; 26 Digest 282, 181 ; *A.-G. v. Biphosphated Guano Co.* (1879), 11 Ch. D. 327, C. A. ; 26 Digest 283, 185 ; *Kirby v. Paignton U.D.C.*, [1912] 1 Ch. 337 ; 26 Digest 297, 286.

(*p*) *R. v. Petrie* (1855), 4 E. & B. 737 ; 26 Digest 284, 187 ; *Powers v. Bathurst* (1880), 49 L. J. Ch. 294 ; 26 Digest 294, 258.

(*q*) *Coats v. Herefordshire C.C.*, [1909] 2 Ch. 579 ; 26 Digest 291, 230.

(*r*) *Turner v. Walsh* (1881), 6 App. Cas. 636, P. C. ; 26 Digest 289, 216 ; *Harper v. Charlesworth* (1825), 4 B. & C. 574 ; 26 Digest 289, 217.

(*s*) 17 Statutes 893.

(*t*) 7 Statutes 95.

(*u*) For these, see s. 1 ; *ibid.* 87.

(*a*) *Wood v. Veal* (1822), 5 B. & Ald. 454 ; 26 Digest 289, 218 ; *Baxter v. Taylor* (1832), 4 B. & Ad. 72 ; 19 Digest 122, 822 ; and see also *R. v. East Mark Inhabitants* (1848), 11 Q. B. 877 ; 26 Digest 288, 215, *per Patterson*, J., at p. 883.

(*b*) *Dawes v. Hawkins* (1860), 8 C. B. (N. S.) 848, at p. 850 ; 26 Digest 295, 270 ; *Corsellis v. L.C.C.*, [1907] 1 Ch. 704, at p. 713 ; 26 Digest 289, 222 ; *A.-G. v. Biphosphated Guano Co.* (1879), 11 Ch. D. 327, C. A. ; 26 Digest 283, 185 ; *Wood v. Veal* (1822), 5 B. & Ald. 454 ; 26 Digest 289, 218.

(*c*) *R. v. Petrie* (1855), 4 E. & B. 737 ; 26 Digest 284, 187 ; *Powers v. Bathurst* (1880), 49 L. J. Ch. 294 ; 26 Digest 294, 258.

(*d*) *R. v. Barr* (1814), 4 Camp. 16 ; 26 Digest 293, 249 ; *Davies v. Stephens* (1836), 7 C. & P. 570 ; 26 Digest 289, 219 ; see also *Thornhill v. Weeks* (No. 3), [1915] 1 Ch. 106 as reported in (1914), 78 J. P. 154.

user and dedication prior to that time may be presumed, if it is not inconsistent with the evidence (e).

On the determination of a tenancy the freeholder should, if he so wishes, assert his rights to stop the public user of the way as soon as possible. If this is not done he will be taken to have acquiesced (f).

By sect. 1 (3) (4) of the Rights of Way Act, 1932 (g), it is now possible for the reversioner to prevent the acquisition of a public right of way during the currency of any tenancy by the erection of a notice to that effect visible to those using the highway, or by the deposit with the council of the borough or district of a map and statutory declaration.

**[546]**

The position of a mortgagor is uncertain, but where he is in possession it would appear that there can be no dedication without the mortgagee's consent and there can be no dedication presumed from user unless it can be shown or presumed that the mortgagee had knowledge of it (h).

**[547]**

Statutory corps., such as railway companies, may dedicate land for use as a highway where the land is vested in them for the purposes for which they were created. The use by the public must not be inconsistent with the objects for which the land was vested in the company (i). The question whether dedication is incompatible with the company's objects is an important one, and any inference drawn from the evidence as to dedication must be subject to this (i). It is for the jury to decide whether there is any incompatibility (k). It is possible where no incompatibility at the present time exists, to impose a limitation so that in the future the rights of the public may be interfered with, in so far as is necessary to enable the performance of the company's duties and their statutory powers (l).

In the case of a railway company, dedication has been inferred of a bridge over the line carrying station buildings (m); footpaths in the vicinity of the line (n); and similar decisions have been given in cases involving canal companies and other statutory bodies in the case of a towing path (o); a bridge (p); a pier (q); and a quay (r).

**[548]**

(e) *Winterbottom v. Derby (Lord)* (1867), L. R. 2 Exch. 316; 26 Digest 293, 251; *Wood v. Veal* (1822), 5 B. & Ald. 454; 26 Digest 289, 218.

(f) *Rugby Charity Trustees v. Merryweather* (1790), 11 East 375, n.; 26 Digest 296, 275.

(g) 25 Statutes 192.

(h) See *Smith v. Wilson*, [1903] 2 I. R. 45, 69, 81. See, generally, Halsbury, Vol. 21, title "Mortgages."

(i) *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; 11 Digest 103, 4; *South Eastern Rail. Co. v. Cooper*, [1924] 1 Ch. 211; 19 Digest 108, 687.

(k) *R. v. Leake (Inhabitants)* (1833), 5 B. & Ad. 469; 26 Digest 290, 225.

(l) *Arnott v. Whiby U.D.C.* (1909), 73 J. P. 369; 26 Digest 334, 654.

(m) *North London Rail. Co. v. St. Mary, Islington, Vestry* (1872), 27 L. T. 672; 26 Digest 276, 138; but see *Taff Vale Rail. Co. v. Pontypridd U.D.C.* (1905), 69 J. P. 351; 26 Digest 291, 228.

(n) *A.-G. v. London and South Western Rail. Co.* (1905), 69 J. P. 110; 26 Digest 292, 239; *Arnold v. Morgan*, [1911] 2 K. B. 314; 26 Digest 291, 231.

(o) *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273, C. A.; 26 Digest 290, 226.

(p) *Grand Surrey Canal Co. v. Hall* (1840), 1 Man. & G. 392; 26 Digest 287, 203.

(q) *Tyne Improvement Commissioners v. Imrie* (1899), 81 L. T. 174; 26 Digest 261, 9.

(r) *Arnott v. Whiby U.D.C.*, *supra*. For a detailed consideration of these decisions, see Pratt and MacKenzie, *Law of Highways* (18th ed.), pp. 23 *et seq.*

**Evidence of Dedication.**—Where the public have without interruption and for a long time used a highway, a jury may infer that there has been dedication if it appears that the owner knew of such user and has taken no steps to inform the public that there has been no dedication. Such evidence is not, however, conclusive (*s*).

Prior to 1932, there was no fixed maximum or minimum period which could be used as a test in deciding whether there was evidence of dedication. Since the period of time is only material in that it is one way of showing the owner's intention to dedicate, it is clear that the evidence must in this respect be considered in conjunction with all the circumstances (*t*).

Where other facts were proved which pointed to an intention to dedicate, user for eighteen months was held to be sufficient (*a*). [549]

The Rights of Way Act, 1932 (*b*), has made certain changes in the law, but by the saving in sect. 2 (2) of the Act, nothing in it is to prevent the dedication of a way being presumed on proof of user for any period of less than twenty years or to prevent the dedication of a highway being presumed or proved under any circumstances under which it could be presumed or proved prior to the passing of the Act. The old law and the existing methods of proof are thus saved, but the Act simplified the law in certain respects.

By sect. 1 (1) of the Act, where a way has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period there was no intention to dedicate, or that during that period there was not at any time any one in possession of the land capable of dedicating the highway.

By sect. 1 (2) where a way has actually been enjoyed as aforesaid for a full period of forty years, the highway is conclusively deemed to have been dedicated, unless there is sufficient evidence that there was no intention during that period to dedicate the way as a highway.

The effect of the Act of 1932 is qualified in the case of statutory corpsns. or bodies in the possession of the land for public or statutory purposes. They are still incapable of dedicating a highway over their land if it is incompatible with the purpose for which the corpn. exists (*c*).

Sub-sects. (3) and (4) of sect. 1 make it easier for a landowner to allow persons to pass across his land without running the risk of having dedication presumed. By sub-sect. (3) the maintenance after January 1, 1934, of a notice by the landowner inconsistent with dedication in a place visible to those using the way is sufficient evidence, in the absence of proof of a contrary intention, to negative any intention to dedicate. If such a notice is torn down or defaced the landowner may give written notice to the county council and to the borough or district council that the way is not dedicated and this notice will, in the absence of

(*s*) *Mann v. Brodie* (1885), 10 App. Cas. 378, 386; 26 Digest 281, 177; *A.-G. v. Watford R.D.C.*, [1912] 1 Ch. 417; 26 Digest 285, 192; *Folkestone Corpn. v. Brockman*, [1914] A. C. 338; 26 Digest 284, 189.

(*t*) Cf. *R. v. Chorley* (1848), 12 Q. B. 515; 26 Digest 304, 358.

(*a*) *North London Rail. Co. v. St. Mary, Islington, Vestry* (1872), 27 L. T. 672; 26 Digest 276, 138.

For periods of four, six and eight years, see *R. v. Hudson* (1732), 2 Stra. 909; 26 Digest 296, 273; *Rugby Charity Trustees v. Merryweather* (1790), 11 East 375, n; 26 Digest 296, 275; and see *Jarvis v. Dean* (1826), 3 Bing. 447; 7 Digest 285, 150.

(*b*) 25 Statutes 191.

(*c*) See *ante*, p. 298.

proof of a contrary intention, be sufficient evidence to negative an intention to dedicate. By sub-sect. (5) of sect. 1 a reversioner of land in the possession of a tenant for a term of years or from year to year let on lease is given the right, notwithstanding the tenancy, to place and maintain such a notice, but not so as to do injury to the business or occupation of the tenant. In view of the possible difficulties in the way of effectively exercising this right, the alternative described below might prove safer for reversioners.

An alternative and more comprehensive method of preventing a presumption of dedication is provided by sect. 1 (4). Under this subsection a landowner may, since January 1, 1934, deposit with the county council and with the borough and district council a map on a scale of not less than six inches to a mile and a statement of what ways he admits have been dedicated as highways.

After the deposit of the map a succession of statutory declarations by the owner or by his successors in title that no additional ways have been dedicated over the land shown in the map are sufficient in the absence of proof of a contrary intention to negative an intention to dedicate. The first of these declarations must be made within six years of the deposit of the map and the subsequent declarations each within six years of the one preceding it. These declarations may, of course, specifically indicate that additional ways have been dedicated.

#### 【550】

Attention has already been drawn to the importance of viewing the period of user in conjunction with all the circumstances. Some examples may make this clear. If an owner of land should build two rows of houses with a road between them opening on to an admitted highway at each end, very slight evidence of user by the public will be sufficient (d). Where the way is a country path, entirely different considerations apply and the attention of the jury must be directed to whether the land is cultivated or in its rough natural state (e). It would not be sufficient to prove that the public had wandered at random over open ground or through woods, either to show dedication of the whole or some part of the land (f).

Where, however, two highways terminate near one another and persons have been in the habit of crossing the intervening land from one to the other, there may be a presumption of the dedication of a highway running between the two points even though the public have been accustomed to go by varying undefined routes (g). In cases which arise in country districts it may be accepted as a general guide that, in order to bring effective proof by user alone, it must be shown that the alleged way leads in a definite direction between two public termini (h). Where one terminus is not public but consists, for example, of a well-known beauty spot, then it is more usual to presume that the public are there by licence of the owner, unless there are further facts,

(d) *Woodyer v. Hadden* (1813), 5 Taunt. 125 at p. 137; 26 Digest 332, 632.

(e) *Chinnock v. Hartley Wintney R.D.C.* (1899), 63 J. P. 327; 26 Digest 286, 195; *Macpherson v. Scottish Rights of Way, etc. Society* (1883), 13 App. Cas. 744; 26 Digest 295, 266.

(f) *Chapman v. Cripps* (1862), 2 F. & F. 864; 26 Digest 299, 299; *Eyre v. New Forest Highway Board* (1892), 56 J. P. 517; 26 Digest 260, 5.

(g) *Eyre v. New Forest Highway Board, supra, per WILLS, J.; Wimbledon and Putney Common Conservators v. Dixon* (1875), 1 Ch. D. 362, C. A.; 19 Digest 15, 37.

(h) *Eyre v. New Forest Highway Board, supra; Moser v. Ambleside U.D.C.* (1925), 89 J. P. 118, C. A.; 26 Digest 294, 256; *A.-G. v. Mallock* (1931), 146 L. T. 344; Digest (Supp.).

such as proof that the public have been allowed by the owner to spend money on the repair or improvement of the way (*i*).

Difficult questions arise in the case of a cul-de-sac. Primarily the points are the same since a highway need not be a thoroughfare (*k*). It is, however, a material point for the jury's consideration that the way leads nowhere (*l*). While in theory it is possible to prove the dedication of a way over a cul-de-sac by evidence of user only, great difficulties in doing so usually arise. The absence of evidence that the highway authority have ever repaired the way may militate strongly against any presumption of dedication (*m*). [551]

Reference has already been made to the case of an owner who has permitted user of a way by the public without asserting his rights. It is therefore important in this connection to point out that much may turn upon the opportunities open to the owner of knowing that the public are making use of a way across his land. Evidence of continuous user should therefore, in order to carry weight, be open and without concealment (*n*).

It weakens the evidence if it can be shown that the owner is non-resident or has no agent on the spot, since if he is not there he cannot be expected to interfere for the purpose of protecting his rights (*o*). On the other hand, it is cogent evidence to show that an owner who has in the past been active in asserting his rights has not in the case in question asserted his rights (*p*). The user must be as of right (*q*), and this means that no presumption of dedication will arise where the evidence is confined to user by individuals or a particular class such as the inhabitants of a parish. In such cases it is assumed that the limited class of persons use the way under licence (*r*). An inference of dedication has, however, been drawn even in such cases where a limited class of persons used the way without an express intimation that they were being granted a special privilege (*R. v. Broke (s)*). This last case should not be relied upon too greatly. Since an *animus dedicandi* is now deemed to be essential, it may be suggested that *R. v. Broke* would only be followed where the jury did not accept the owner's evidence that his intention was only to grant a licence to a restricted class of persons.

Much turns upon any evidence given of an interruption of the public use. One act of interruption carries more weight than many acts of enjoyment (*t*). It is for this reason that it is usually sufficient to close

(*i*) *A.-G. v. Antrobus*, [1905] 2 Ch. 188 ; 26 Digest 297, 285, and cases in note (*h*), *ante*, p. 300.

(*k*) *Bourke v. Davis* (1889), 44 Ch. D. 110, 112 ; 26 Digest 300, 313 ; *Vernon v. St. James, Westminster, Vestry* (1880), 16 Ch. D. 449, C. A. ; 26 Digest 310, 427.

(*l*) *Bateman v. Bluck* (1852), 18 Q. B. 870 ; 26 Digest 263, 41.

(*m*) *A.-G. and London Property Investment Trust v. Richmond Corp. (1903)*, 68 J. P. 73 ; 26 Digest 297, 284.

(*n*) *Greenwich Board of Works v. Maudslay* (1870), L. R. 5 Q. B. 397 ; 26 Digest 292, 236.

(*o*) *Chinnock v. Hartley Wintney R.D.C.* (1899), 63 J. P. 327 ; 26 Digest 286, 195 ; and see *Harper v. Charlesworth* (1825), 4 B. & C. 574 ; 26 Digest 289, 217.

(*p*) *Coats v. Herefordshire County Council*, [1909] 2 Ch. 579 ; 26 Digest 291, 230 ; *Shearburn v. Chertsey R.D.C.* (1914), 78 J. P. 289 ; 26 Digest 303, 345 ; *A.-G. v. Hemingway* (1916), 81 J. P. 112 ; 26 Digest 301, 316.

(*q*) *Greenwich Board of Works v. Maudslay*, *supra*, note (*n*). See also *Hue v. Whitley*, [1929] 1 Ch. 440 ; Digest (Supp.).

(*r*) *Barracough v. Johnson* (1838), 8 Ad. & El. 99 ; 26 Digest 286, 193.

(*s*) (1859), 1 F. & F. 514 ; 26 Digest 301, 323.

(*t*) *Poole v. Huskinson* (1843), 11 M. & W. 827, *per PARKE, B.* ; 26 Digest 286, 194 ; and see *A.-G. v. Hemingway*, *supra*, note (*p*).

the way completely for one day in the year (*u*). In the same way evidence that a particular person has been challenged and turned back, or has agreed to pay for permission to go on, far outweighs the evidence of persons who have used the way unmolested (*a*).

A great deal of evidence in the past has been devoted to proving that notice boards (*b*), bars (*c*) and locked gates (*d*) were erected and maintained to assert the owner's rights. Fine distinctions were drawn, as for example where it was said that an unlocked gate might only be to prevent cattle straying or that there was dedication subject to the right to maintain the gate (*e*).

Sect. 1 (3), (4) of the Rights of Way Act, 1932 (*f*), has, however, simplified matters. Provisions are there set out as to the erection of notice boards and the deposit of maps which will enable the owner in the future to assert his rights in a standardised and recognised form.

### [552]

In the case of acts of ownership by a highway authority, dedication may be inferred where the authority has used the land adjoining a highway for the deposit of stone or similar purposes (*g*), or has as of right piped in and levelled the site of a ditch adjoining the road (*h*).

Notice has already been taken of the importance of ascertaining whether public money has been spent upon the repair or upkeep of a way. Where it can be shown that this is so, there is a strong presumption in favour of dedication (*i*). The presumption can often be rebutted where it is found that the owner, for his own convenience, has done certain repairs to a public highway adjoining his land (*k*). The foregoing statement of the law also applies to streets which have been swept, lighted or scavenged out of the public funds (*l*).

It should, however, be borne in mind that local authorities have power to scavenge and light streets which are admittedly private (*m*).

The ordinary rules of evidence of reputation apply in the case of highways, and sect. 3 of the Rights of Way Act, 1932 (*n*), now provides

(*u*) *British Museum Trustees v. Finnis* (1833), 5 C. & P. 460; 26 Digest 299, 302; *Paul v. James* (1841), 1 Q. B. 832; 26 Digest 302, 337.

(*a*) *Stone v. Jackson* (1855), 16 C. B. 199; 7 Digest 285, 151; *Healey v. Batley Corpns.* (1875), L. R. 19 Eq. 375; 26 Digest 283, 183; but see *Mildred v. Weaver* (1862), 3 F. & F. 30; 26 Digest 299, 293; *Shearburn v. Chertsey R.D.C.* (1914), 78 J. P. 289; 26 Digest 303, 345.

(*b*) *Poole v. Huskinson* (1843), 11 M. & W. 827; 26 Digest 286, 194; *Healey v. Batley Corpns., supra*; *Moser v. Ambleside U.D.C.* (1925), 89 J. P. 118, C. A.; 26 Digest 294, 256.

(*c*) *Rugby Charity Trustees v. Merryweather* (1790), 11 East 375, n.; 26 Digest 301, 314.

(*d*) *Healey v. Batley Corpns., supra*.

(*e*) *R. v. Bliss* (1837), 1 Jur. 960; 7 Digest 312, 326; *A.-G. v. Meyrick and Jones* (1915), 79 J. P. 515; 26 Digest 304, 357.

(*f*) 25 Statutes 192. See ante, p. 299.

(*g*) *Coats v. Herefordshire County Council*, [1909] 2 Ch. 579; 26 Digest 291, 230.

(*h*) *Walmsley v. Featherstone U.D.C.* (1909), 73 J. P. 322; 26 Digest 310, 430.

(*i*) *R. v. Thomas* (1857), 7 E. & B. 399; 26 Digest 361, 871; *Farquhar v. Newbury R.D.C.*, [1909] 1 Ch. 12, C. A.; 26 Digest 289, 224; *A.-G. v. Watford R.D.C.*, [1912] 1 Ch. 417; 26 Digest 285, 192.

(*k*) *Rundle v. Hearle*, [1898] 2 Q. B. 83; 26 Digest 369, 951; *A.-G. v. Woolwich Borough Council* (1929), 93 J. P. 173; Digest Supp.

(*l*) *R. v. Lloyd* (1808), 1 Camp. 260; 26 Digest 263, 40; *Vernon v. St. James, Westminster, Vestry* (1880), 16 Ch. D. 449 C. A.; 26 Digest 310, 427; *A.-G. and London Property Investment Trust v. Richmond Corpns.* (1903), 68 J. P. 73; 26 Digest 297, 282; but see *Kirby v. Paignton U.D.C.*, [1913] 1 Ch. 337; 26 Digest 297, 286.

(*m*) See ss. 42, 161 of P.H.A., 1875; 13 Statutes 643, 692.

(*n*) 25 Statutes 193.

that before deciding the question of highway or no highway, the court shall take into consideration any map, plan or history of the locality or other relevant document tendered in evidence, and such weight is to be given to this evidence as they consider justified in the circumstances, including the antiquity of the document, the status of the person or persons by whom it was made or compiled, its purpose, and the custody in which it has been kept and from which it is produced. [553]

**Existing Roads.**—If a public right of way is created for a limited period, for example, under a Turnpike Act, and the public continue to use the way after that time the owner may be presumed to have dedicated it (o). In the same way where a public right of way exists for a specific purpose and the public use the way for different purposes, a dedication may be presumed if the increased user does not interfere with the exercise of the right originally granted (p). [554]

**Restricted Dedication.**—Land may be dedicated to the public subject to certain restrictions as to time and manner of user or subject to the existence of obstructions (q).

Where it is in issue whether the restriction or obstruction is rightly imposed upon the public as a part of the dedication by the owner, it is a question of fact for the jury, but they should in general recognise the restriction or obstruction where it has been in existence as far back as living memory goes (r), and come to the opposite conclusion where evidence shows it to be of recent origin (s). It is equally a question of fact whether the obstruction or restriction remains or whether the owner has abandoned his rights when an obstruction is removed or a restriction not enforced (t).

The imposition of restrictions often causes difficulty where the restrictions or conditions are such that they may be held to be inconsistent with dedication as a highway as, for instance, an attempt to dedicate a highway subject to a power to charge tolls of an amount to be determined by the dedicators (u). Another example of what is in fact an attempt to impose restrictions not permitted by law, is the attempt to create a churchway. A churchway must have existed from time immemorial and cannot be newly created now and an attempt to do so would probably be void (a).

There are other examples where the intention is clearly to dedicate the way as a highway, but the restrictions imposed are inconsistent with the use of the land as a highway. In some instances it is probable that the dedication would be held good and the restrictions void (b).

(o) *R. v. Thomas* (1857), 7 E. & B. 399; 26 Digest 361, 871.

(p) *Sheringham U.D.C. v. Holsey* (1904), 68 J. P. 395; 26 Digest 306, 374; *Abercromby v. Fermoy Town Commissioners*, [1900] 1 I. R. 302, C. A.; 26 Digest 296, 273 i; *A.-G. v. Hemingway* (1916), 81 J. P. 112; 26 Digest 301, 316.

(q) *Fisher v. Prowse* (1862), 2 B. & S. 770; 26 Digest 265, 66; *Gautret v. Egerton* (1867), L. R. 2 C. P. 371; 7 Digest 289, 168; *Brackley v. Midland Rail. Co.* (1916), 85 L. J. (K. B.) 1596, C. A.; 26 Digest 302, 333.

(r) *Fisher v. Prowse* (1862), 2 B. & S. 770; 26 Digest 265, 66; *Mercer v. Woodgate* (1869), L. R. 5 Q. B. 26; 26 Digest 417, 1357.

(s) *Harrison v. Danby* (1870), 34 J. P. 759; 26 Digest 417, 1358.

(t) *Tyne Improvement Commissioners v. Imrie* (1899), 81 L. T. 174; 26 Digest 261, 9.

(u) *Austerberry v. Oldham Corp.* (1885), 29 Ch. D. 750, C. A.; 26 Digest 267, 71. In this case it was held that there had been no dedication as the restrictions were inconsistent with such a presumption.

(a) *Farquhar v. Newbury R.D.C.*, [1909] 1 Ch. 12, C. A.; 26 Digest 289, 224.

(b) *Arnold v. Blaker* (1871), L. R. 6 Q. B. 433; 26 Digest 417, 1359; but see *Austerberry v. Oldham Corp.*, *supra*, note (u).

In others, the insistence by the owner upon restrictions inconsistent with the use of the land as a highway would be evidence to negative the presumption of dedication, and the public would be held to use the way under a licence from the owner (*c*). No dedication could be made to a limited portion of the public only as has been already pointed out (*d*).

Apart from statute there cannot be a limitation of time upon a dedication, except in the case of a lessee (*e*).

A bridge may be dedicated for foot and horse traffic and for carriages on those occasions only when the ford across the river is impassable (*f*).

Mention has been made of obstructions as well as restrictions. The cases upon this point are numerous and include permanent obstacles such as projecting doorsteps (*g*), coal shoot plates and area gratings (*h*), cellar roofs, doors and flaps (*i*). In addition, the obstruction may merely be one occurring periodically such as the ploughing of a footpath crossing a field (*k*), or holding markets or fairs upon the highway at certain times (*l*).

Since the theory underlying the dedication of highways is that the owner has offered the highway to the public, who have accepted it, it follows that where there is a limited dedication, subject to an obstruction, the public must take the highway as they find it and cannot hold the owner responsible for accidents due to the obstruction (*m*). Apart from a royal grant or statute a highway cannot be dedicated subject to the right to levy varying tolls (*n*). There are a certain number of authorities touching upon this point which appear to lay down the contrary, but it is submitted that they are not sufficiently conclusive to negative this general rule. The whole question of dedication subject to what would be nuisances, if they came into being after dedication, has become somewhat obscure owing to the extension of the doctrine of nuisances. For a discussion of this very intricate question, see the title HIGHWAY NUISANCES. [555]

**Creation of Highways by Statute.**—A large number of highways were created by inclosure awards made either under a local Act, or under the Inclosure Act, 1845 (*o*).

(c) See, for example, *Stafford (Marquis) v. Coyney* (1827), 7 B. & C. 257; 26 Digest 307, 387. The decision in this case was that there was either a limited dedication or only a revocable licence, but it was not decided which it was.

(d) *Bermondsey Vestry v. Brozen* (1865), L. R. 1 Eq. 204; 26 Digest 307, 389; and see *ante*, p. 301.

(e) *Dawes v. Hawkins* (1860), 8 C. B. (N. S.) 848; 26 Digest 295, 270; and see *ante*, p. 297.

(f) *R. v. Northampton County Inhabitants* (1814), 2 M. & S. 262; 26 Digest 306, 384; *R. v. Buckingham (Marquis)* (1815), 4 Camp. 189; 26 Digest 307, 385.

(g) *Cooper v. Walker* (1862), 2 B. & S. 770, 773; 26 Digest 265, 66; *Robbins v. Jones* (1863), 15 C. B. (N. S.) 221; 26 Digest 442, 1590; *Selby v. Whitbread & Co.*, [1917] 1 K. B. 736; 26 Digest 307, 393.

(h) *Robbins v. Jones*, *supra*.

(i) *Fisher v. Prowse* (1862), 2 B. & S. 770; 26 Digest 265, 66.

(k) *Mercer v. Woodgate* (1869), L. R. 5 Q. B. 26; 26 Digest 417, 1357.

(l) *R. v. Smith* (1802), 4 Esp. 111; 26 Digest 441, 1581; *Simpson v. Wells* (1872), L. R. 7 Q. B. 214; 26 Digest 441, 1578; and see also *Great Eastern Rail. Co. v. Goldsmid* (1884), 9 App. Cas. 927; 33 Digest 524, 18; *A.-G. v. Horner* (1885), 11 App. Cas. 66; 26 Digest 442, 1592; *Stepney Corp. v. Gingell, Son & Foskett, Ltd.*, [1909] A. C. 245; 26 Digest 443, 1593.

(m) *Owen v. De Winton* (1894), 58 J. P. 833; 7 Digest 287, 161.

(n) *Austerberry v. Oldham Corp. n.* (1885), 29 Ch. D. 750, C. A.; 26 Digest 267, 71.

(o) See s. 62 of that Act; 2 Statutes 469.

Highways may be created by statute even over a road already in existence as a private way and in such cases, of course, user by the public is not necessary to complete the creation of a highway. In certain cases, however, the statute merely authorises the laying out of a public highway. The highway in these circumstances does not come into existence until it is laid out and properly completed (*p*), but where the public habitually use the road in its unfinished state it may be said that they have accepted it in that condition (*q*).

The powers conferred on the Minister of Transport and on highway authorities in regard to the making of roads are not relevant to the present article, since no question of dedication can arise apart from those mentioned in the preceding paragraph. [556]

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(*p*) *Cubitt v. Maxse (Lady Caroline)* (1873), L. R. 8 C. P. 704; 26 Digest 282, 181; *R. v. French* (1879), 4 Q. B. D. 507, C. A.; 26 Digest 268, 78.

(*q*) *R. v. Lordsmere Inhabitants* (1850), 15 Q. B. 689; 26 Digest 360, 863.

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## DEFAMATION

| PAGE  | PAGE |  |     |
|---|------|--|-----|
| GENERAL - - - - -   | 305  | Effect of Publication where matter not of Public Interest  | 309 |
| POWER OF LOCAL AUTHORITY TO SUE FOR DEFAMATION - - -              | 306  | Effect of Invitation to Reporters or "Outsiders" to Listen   | 309 |
| CRIMINAL INFORMATION FOR LIBEL ON MEMBER OF LOCAL AUTHORITY - - - | 306  | Admission of the Press to Meetings   | 309 |
| LIABILITY OF LOCAL AUTHORITY FOR DEFAMATION BY SERVANT - - -      | 307  | DEFAMATION OF CANDIDATE FOR COUNCILLORSHIP - - -   | 310 |
| LIABILITY OF MEMBER OF LOCAL AUTHORITY FOR DEFAMATION - - -       | 308  | PAYMENT BY LOCAL AUTHORITY OF SERVANT'S EXPENSES IN DEFAMATION SUIT - - -  | 310 |
| General - - - - -   | 308  | STATUTORY PROVISIONS AS TO PAYMENT BY LOCAL AUTHORITY OF SERVANT'S EXPENSES IN PROCEEDINGS FOR ACT DONE IN DISCHARGE OF HIS DUTIES - - - - - | 311 |
| Privileged Occasion—Acting with sense of Duty - - -               | 308  | LONDON - - - - -   | 312 |
| Privilege excluded by wrong Motive - - - - -                      | 308  |  |     |

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*See also titles : ACTIONS BY AND AGAINST LOCAL AUTHORITIES ; COSTS.*

FOR THE GENERAL PRINCIPLES OF THE LAW RELATING TO LIBEL AND SLANDER,  
*See HALSLEY'S LAWS OF ENGLAND, VOL. 18, TITLE "LIBEL AND SLANDER."*

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**General.**—Defamation includes both libel and slander. In an action for libel or slander the defendant may justify the truth of the statement made, and thus show that the plaintiff has received no injury. If the statement published is true, there is no injury and an action at law will not lie.

A defamatory statement is one calculated to expose the person concerning whom it is made to hatred, contempt or ridicule, or to

convey an imputation on him disparaging or injurious to him in his trade, business, profession, calling or office. An action for libel will lie if the defamatory statement is expressed by written or printed words published concerning the plaintiff to some other person, without lawful justification or excuse. Slander for which an action will lie is a defamatory statement expressed by spoken words, sounds or gestures concerning the plaintiff to some other person, without lawful justification or excuse, whereby the plaintiff suffers special damage (which must be proved); or which (without any proof of special damage) is calculated to convey an imputation disparaging or injurious to him in connection with his trade, business, profession, calling or office, or which imputes that he has committed a crime punishable with imprisonment, or (if published concerning a woman) which imputes to her unchastity or adultery. Thus unless the defamatory statement complained of is actionable *per se*, no action of slander will lie unless the plaintiff alleges and proves that he has suffered actual damage. [557]

**Power of Local Authority to sue for Defamation.**—A local authority cannot bring an action of libel or slander for a defamatory statement which reflects not upon the authority, but on its members or officials only; and a statement imputing misconduct to the local authority of which it cannot be guilty does not found a cause of action. In an action of libel by a municipal corpn. (a) the statement of claim complained that the defendant had charged them with corrupt practices. The statement did not allege that the corpn. had suffered any special pecuniary damage in consequence of such imputation. It was held that, inasmuch as a corpn., as distinguished from the individuals composing it, could not be guilty of corrupt practices, the statement of claim disclosed no cause of action. But a corpn. may sue for a libel affecting property, though not for one merely affecting personal reputation (b).

In *Manchester Corpn. v. Williams* the court applied to a municipal corpn. the principles laid down with reference to corpsns. generally in the case of *Metropolitan Saloon Omnibus Co. v. Hawkins* (c). It was there held that a joint stock company could maintain an action for libel imputing insolvency and misconduct by one of their shareholders. POLLOCK, C.B., there laid down the limits of a corpn.'s right of action for libel. "It would be monstrous if a corpn. could maintain no action for slander of title. . . . It could not sue in respect of an imputation of murder or incest, or adultery because it could not commit those crimes. Nor could it sue in respect of a charge of corruption, for a corpn. cannot be guilty of corruption although the individuals composing it may. . . . It appears to me clear that a corpn. at common law may maintain an action for a libel by which its property is injured" (d). [558]

**Criminal Information for libel on Member of Local Authority.**—The common law provides a drastic remedy where a libel is published in relation to the conduct of members of a local authority in the discharge of their duties. Thus it has been held that the High Court, in its discretion, may grant a criminal information to protect a person exercising a public duty imposed on him by statute, though he may not be

(a) *Manchester Corpn. v. Williams*, [1891] 1 Q. B. 94; 13 Digest 408, 1284.

(b) *Ibid.*, per DAY, J., at p. 96.

(c) (1859), 4 H. & N. 87, Ex. Ch.; 13 Digest 408, 1283.

(d) *Ibid.*, at p. 90.

acting in a judicial capacity, from a libel published concerning him in the exercise of that duty (e). In this case Lord ALVERSTONE, L.C.J., said (f) : " I decline to recognise the theory that no protection should be offered by criminal information simply because people are not acting in a judicial capacity. In my opinion it would be highly detrimental to the public interest if public officials, called on to perform public acts, were not entitled to the same protection simply because the particular act they were then doing was said not to be a judicial act."

[559]

**Liability of Local Authority for Defamation by Servant.**—A local authority is liable in respect of a defamatory statement written or published by a servant, even though the servant knows the statement to be untrue, provided that it was in the course, or within the scope, of the servant's employment to make the statement (g).

On the other hand, the local authority are not liable in respect of a defamatory statement written or published by a servant otherwise than within the scope of his employment, or otherwise than in a matter which forms part of his duty, or without their authorisation (h).

In *Glasgow Corp. v. Lorimer* Lord LOREBURN, L.C., said (i) : " I do not think it is good law to say that the corpn. is bound by anything said by one of its servants which is connected with the business of that servant. The question is, whether or not there is any authority to communicate on behalf of the corpn. any comment or statement of opinion at all." Lord ATKINSON said (k), in the same case : " There is nothing, in my opinion, on the face of the pleadings to show expressly or by implication that Gilmour (the person who uttered the defamatory statement in question) was clothed with authority to express, on behalf of the corpn., to ratepayers any opinion he might form on the genuineness of any receipts which might be produced to him for payment of rates. It was not shown by the pursuer's pleadings, as I think it should be, that the expression of such an opinion was within the scope of Gilmour's employment ; from which it follows, on the authorities, that the corpn. are not responsible for a slander uttered by him in the expression of that opinion."

In the case of *Beaton v. Glasgow Corp.* (l) the superintendent of certain public baths, employed by the corpn., had sent a report to the general manager of the baths, who was also employed by the corpn., commenting adversely on the conduct of one Beaton, a swimming instructor at the baths, who was employed by the Glasgow school board. The general manager sent the report to the school board. In an action for damages by Beaton against the corpn. it was held, by the Court of Session, that it was no part of the duty of the general manager to make communications on behalf of the corpn. to the school board, that it was not enough to aver generally that the report was forwarded " in the execution of his duty," and that, in the absence of any averment that he had special authority to act as he did, the action was irrelevant. . . . " To make a corpn. liable for a slander by a person in their employment, it is not enough to say generally that what that

(e) *R. v. Russell* (1905), 69 J. P. 450 ; 14 Digest 351, 3694.

(f) *Ibid.*, at p. 454.

(g) *Citizens' Life Assurance Co. v. Brown*, [1904] A. C. 423 ; 32 Digest 82, 1130.

(h) *Glasgow Corp. v. Lorimer*, [1911] A. C. 209 ; 32 Digest 86, 1166.

(i) *Ibid.*, at p. 214.

(k) *Ibid.*, at p. 215.

(l) [1908] S. C. 1010 ; 32 Digest 86, 1166 ii.

person did was done in the execution of his duty. You must go on and make some averment to show what his duty was, so as to make it apparent that the particular thing complained of at least belonged to the class of services which he was employed to perform" (m). See as to what is scope of employment, Halsbury's Laws of England, Vol. 20, pp. 248—257. [560]

**Liability of Member of Local Authority for Defamation. General.**—Where by virtue of the common law, or of some statute, persons meet to discharge public duties of an administrative nature, the occasion is privileged as regards untrue defamatory statements made in the exercise of duty. Such statements made at a meeting of a local authority are privileged, not absolutely, but in the qualified sense that if the statement, though untrue, was made *bona fide* and without malice, the person making it is not liable in an action at the suit of the person defamed. In such cases malice must be actually proved (n). It is not proved by facts which are consistent with its presence as well as its absence (o). Where, in an action of slander, the occasion is privileged, the plaintiff must prove that the defamatory statement was made with some indirect motive; and if the defendant made the statement believing it to be true, he will not be the less privileged, even though there were no reasonable grounds for his belief (p). [561]

**Privileged occasion—Acting with sense of Duty.**—The chairman of a board of guardians, at a meeting of the board, uttered certain defamatory statements concerning the method by which the rates were collected by the assistant overseer of a parish in the union. It was held, by the Court of Appeal (q), that the board had an interest in the proper collection of rates within their union, and that the occasion was privileged. "If the statement is made under a sense of duty in the matter, and the circumstances are such that the judge finds that there is a duty so to raise the question, or a presumption of a duty in the matter, then it may be a privileged occasion, provided one thing is present, that is to say, provided that the man who sets up that duty as constituting a privileged occasion, is acting with a sense of that duty" (r). [562]

**Privilege excluded by wrong Motive.**—In the case of *Royal Aquarium Society v. Parkinson* (s) it was held that a county councillor making a statement at a meeting of the L.C.C., held for the purpose of granting music and dancing licences, is not entitled to absolute immunity from an action in respect of such statement—as he would be had the statement been made in proceedings before a court of law. He is only entitled to the ordinary privilege which applies to a communication made without express malice on a privileged occasion.

In an action for slander, where the occasion is privileged, the defence of privilege may be rebutted by showing that, from some wrong motive, such as anger, or gross and unreasoning prejudice with regard to a particular subject-matter, the defendant stated what he did not know to be true, reckless whether it was true or false. "Where, as in this case, a body of persons are engaged in the performance of duties imposed

(m) *Ibid.*, per Lord KINNEAR, at p. 1014.

(n) *Somerville v. Hawkins* (1851), 10 C. B. 583; 32 Digest 112, 1437.

(o) *Harris v. Thompson* (1853), 13 C. B. 333; 32 Digest 129, 1598.

(p) *Howe v. Jones* (1885), 1 T. L. R. 461; 32 Digest 156, 1885.

(q) *Mapey v. Baker* (1909), 73 J. P. 289; 32 Digest 124, 1559.

(r) *Ibid.*, per VAUGHAN WILLIAMS, L.J., at p. 290.

(s) [1892] 1 Q. B. 431; 32 Digest 128, 1592.

upon them, of deciding a matter of public administration, which interests not themselves, but the parties concerned and the public, it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander, it is privileged, provided the person who utters it is acting *bona fide*, in the sense that he is using the privileged occasion for the proper purpose and is not abusing it. If a person on such an occasion states what he knows to be untrue, no one ever doubted that he would be abusing the occasion. But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held, and I think rightly held, that a jury is justified in finding that he has abused the occasion" (t). [563]

*Effect of publication where matter not of Public Interest.*—In *Purcell v. Sowler* (u) it was held that the administration of the poor laws, both by the Government department and the local authorities, including the conduct of the medical officers, is a matter of public interest; but the publication of a report of proceedings at a meeting of poor law guardians at which *ex parte* charges of misconduct against the medical officer of the union were made, is not a privileged occasion. In this case the libel was contained in a report published in a Manchester newspaper by the defendants, the proprietors, of the proceedings at the meeting of the guardians, the medical officer being charged with neglect in attending to patients when sent for.

The meaning of this decision, as explained by Lord ESHER, M.R., in *Pittard v. Oliver* (a), is that the occasion was privileged as regards the time and place at which the words were spoken, and as regards the person who spoke them, yet the matter was not one of public interest, and therefore the publication in a newspaper was not privileged.

[564]

*Effect of Invitation to Reporters or "Outsiders" to listen.*—A member of a board of guardians, in the presence and hearing of reporters, made certain defamatory statements respecting the plaintiff, who had been their clerk. The jury found that the member made the statements without malice and *bona fide*, believing them to be true. It was held that the privilege was not destroyed by the presence of the reporters, whose attendance was in no way due to the action of the speaker (b). In this case Lord ESHER said, that if, in similar circumstances, the person making the statement invites outsiders to come in and listen, he would be inclined to hold that there would be evidence of malice in making the statement in the presence of others who might promulgate it (c). [565]

*Admission of the Press to Meetings.*—In connection with the above case, reference may be made to the Local Authorities (Admission of the Press to Meetings) Act, 1908 (d). Under that Act representatives of the Press must be admitted to the meetings of local authorities, but a local authority may temporarily exclude such representatives from

(t) *Ibid.*, per Lord ESHER, M.R., at p. 443.

(u) (1877), 2 C. P. D. 215, C. A.; 32 Digest 146, 1764.

(a) [1891] 1 Q. B. 474, at p. 479; 32 Digest 118, 1496.

(b) *Pittard v. Oliver*, *supra*.

(c) *Ibid.*, at p. 478.

(d) S. 1; 10 Statutes 844.

a meeting as often as may be desirable, when, in the opinion of a majority of the members present, expressed by resolution, in view of the special nature of the business then being dealt with, or about to be dealt with, such exclusion is advisable in the public interest. "Local Authority," as defined in sect. 2 of the Act, has a wide application. It applies, *inter alia*, to the council of a county, borough (including a metropolitan borough), urban or rural district, or parish, and to a joint committee or joint board of any two or more of such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated; and to a parish meeting under the L.G.A., 1933 (e); also to an education committee or joint education committee, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for approval; also to the Metropolitan Water Board and a joint water board under the provisions of any Act of Parliament or provisional order; and to any other local body having power to levy a rate. The Act does not apply to a meeting of a committee of a local authority, unless the committee is itself a local authority (sect. 3). See also title ADMISSION TO MEETINGS, Vol. I., p. 92. [566]

**Defamation of Candidate for Councillorship.**—In *Nuttall v. Toulmin and Sons* (f) the plaintiff, who was the managing director of the Lion Brewery and a candidate for office as a town councillor, sued the publisher of the local newspaper for an alleged libel contained in an open letter, addressed to the plaintiff and published in that paper, from a congregational minister. In this letter the minister said: "I hold that your business ought to preclude you from a seat on the town council. By common consent your trade is productive of a large amount of crime and pauperism and sickness." The judge in this case directed the jury that the only question was whether the letter referred to the business of the Lion Brewery, or to brewers in general. If the latter, the comment did not go beyond fair criticism. The jury gave a verdict for the defendants. [567]

**Payment by Local Authority of Expenses of Servant in Defamation Suit.**—In *A.-G. v. Compton* (g) it was held that the application of any part of the poor rate to the payment of the bill of costs in an action brought against an officer of the board of guardians for a libel on him in respect of acts done in the execution of his duties, was a breach of trust on the part of the guardians. In that case the guardians had declined to accede to the application of the officer libelled that they should undertake to defend the case.

In *R. v. Liverpool Corp.* (h) a member of the borough police force was the subject of a libellous article in a newspaper, in reference to his conduct as inspector of public houses, in giving a good character to an applicant for a licence at the borough licensing sessions whom he was said to have known to be the keeper of a house of ill-fame. Acting upon an intimation from, though without the official sanction of, his superior authorities, he took criminal proceedings against the publisher of the libel, and so incurred expenses. The watch committee, with the subsequent approval of the council, made an order for the

(e) See s. 43; 26 Statutes 326.

(f) (1912), 76 J. P. Jo. 113.

(g) (1842), 1 Y. & C. Ch. Cas. 417; 38 Digest 591, 1212.

(h) (1872), 41 I. J. (Q. B.) 175; 33 Digest 83, 536.

payment from the borough fund of money in respect of such expenses. It was held that the order was inadmissible. QUAIN, J., said (*i*) : " This was not an expense incurred for the purpose of the constabulary force, but for the vindication of the private character of a constable. Then it cannot be said that this order for the application of the surplus of the (borough) fund is made for the public benefit of the inhabitants and improvement of the borough. It has been held that the costs of an alderman and a justice of the peace of the borough, of defending a rule for a criminal information against him for misdemeanors in his office in affronting another justice of the borough, were not payable out of the borough fund. That case (*k*) is a stronger case than the present and governs it." [568]

**Statutory Provisions as to payment by Local Authority of Servant's Expenses in proceedings for act done in discharge of his duties.**—In connection with the question of the power of a local authority to reimburse an officer or servant in respect of the expenses incurred by him in defending proceedings against him for making and publishing defamatory statements, reference may be made to the following three statutory enactments. These confer considerable powers on the different classes of local authority referred to in the enactments, of indemnifying officers or servants in respect of costs incurred by them in connection with proceedings (including presumably proceedings for libel or slander) taken against them for any " matter or thing " done by any such officer or servant acting under the direction of the authority in the discharge of a statutory duty.

It is provided by sect. 265 of the P.H.A., 1875 (*l*), that no matter or thing done by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority, or by any officer of any such authority, or other person whomsoever acting under the direction of such authority, shall, if the matter or thing be done *bona fide* for the purposes of executing the Act of 1875, subject them or any of them personally to any action, liability, claim or demand whatsoever ; and any expense incurred by the authority, member, officer, or other such person acting as aforesaid, is to be repaid out of the fund applicable by the authority to the general purposes of the Act.

Under sect. 226 (3) of the Municipal Corps. Act, 1882 (*m*), where the defendant in an action, prosecution or other proceeding against any person for any act done in pursuance, or execution, or intended execution of the Act, is an officer, agent or servant of a borough council, the council may, if they think fit (except so far as the court before whom the proceeding is heard and determined otherwise direct), pay out of the general rate fund all or any part of any sums payable by the defendant in, or in consequence of, the action, prosecution or proceeding, whether in respect of costs, charges, expenses, damages, fine or otherwise.

A somewhat similar provision is contained in sect. 66 of the L.G.A., 1888 (*n*). By that section, all costs incurred by any justice, police officer or constable, in defending any legal proceedings taken against

(*i*) (1872), 41 L. J. (Q. B.), at p. 177.

(*k*) *R. v. Bridgewater Corpns.* (1839), 10 Ad. & E. 281 ; 13 Digest 363, 975.

(*l*) 13 Statutes 734.

(*m*) 10 Statutes 649.

(*n*) *Ibid.*, 740.

him in respect of any order made or act done, in the execution of his duty, shall, to such amount as may be sanctioned by the standing joint committee, and so far as they are not otherwise provided for, be paid out of the county fund.

It will be noticed that these provisions do not extend to an officer or other person who is the plaintiff or prosecutor in an action or other proceeding. [569]

**London.**—Sect. 124 of the P.H. (London) Act, 1891 (*o*), is a similar provision to sect. 265 of the P.H.A., 1875 (*p*), but extends to members and officers of the L.C.C., as well as of the sanitary authorities, when executing the Act of 1891. There seems to be no similar enactment applying to the L.C.C. or a metropolitan borough council, when they are performing duties under Acts not relating to the public health. [570]

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(*o*) 11 Statutes 1092.

(*p*) See *ante*, p. 311.

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## DEFAULTING AUTHORITY

|   | PAGE |  | PAGE |
|---|------|--|------|
| PRELIMINARY — — —   | 312  | TOWN AND COUNTRY PLANNING                        |      |
| P.H.A., 1875, AND P.H. (SMOKE<br>ABATEMENT) ACT, 1926 — — | 313  | ACT, 1932 — — —                                  | 315  |
| L.G.A., 1929 — — —  | 313  | ROAD TRAFFIC ACT, 1934 — —                       | 316  |
| L.G.A., 1894 — — —  | 314  | FOOD AND DRUGS (ADULTERATION)<br>ACT, 1928 — — — | 316  |
| L.G.A., 1933 — — —  | 314  | MILK AND DAIRIES ACTS, 1915 AND<br>1922 — — —    | 316  |
| EDUCATION ACT, 1921 — —                                   | 315  | LONDON — — —                                     | 316  |
| HOUSING ACT, 1930 — —                                     | 315  |  |      |

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*See also titles : APPEALS TO MINISTERS ;  
LOCAL GOVERNMENT ;  
MANDAMUS.*

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**Preliminary.**—When pursuing its policy of decentralisation the Legislature has not omitted to provide machinery whereby a neglect or refusal on the part of a local authority to carry out the powers and duties entrusted to them may be overcome. There are and have always been common law remedies provided to meet such a situation, but it has been customary to endeavour to meet the difficulties caused by default by the inclusion of special provisions in statutes. The former have rarely been acted upon, as an application for a *mandamus* may involve the Ministry in substantial costs, and the committal to prison of the members of the council in default is the last remedy for a continued disobedience to a *mandamus*. The alternative course of the appointment of a person by the Minister to take over the council's duties means the supersession of the members of the council by a Government official. For these reasons, sects. 299—302 of the P.H.A., 1875 (*a*), were replaced, as respects the councils of non-county boroughs and districts, by sect. 57 (3) of the L.G.A., 1929 (*b*), allowing functions

as respects which a default has been made to be transferred to the county council by an order of the Minister (c). It is believed that even this course has only rarely been acted upon and that the Ministry prefer by persuasion to try to bring a council in default to a more reasonable attitude. [571]

**P.H.A., 1875, and P.H. (Smoke Abatement) Act, 1926.**—Under sect. 299 of the Act of 1875 (d), where a complaint is made to the M. of H. that a local authority has made default (1) in providing their borough or district with sufficient sewers, or in the maintenance of existing sewers, or (2) in providing their borough or district with a supply of water in cases where there is risk of injury to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a proper supply can be got at a reasonable cost, or (3) in enforcing any provisions of the Act which it is the duty of the authority to enforce, power is given to the Minister to compel the authority to discharge their duties. This section now applies only to county boroughs (e).

Two methods are open to the Minister. He may limit a time within which the duty must be performed, and if there is still default a writ of *mandamus* may be obtained. Alternatively some person may be appointed by the Minister to perform the duty of the authority and for this purpose the person appointed is invested with the same powers as the local authority possess with the exception of the power to levy a rate which, however, is given for limited purposes by sect. 300.

The complaint need not relate to the borough or district as a whole, but may refer to a part of it only.

The section does not apply to the provision of additional sewers for the purpose of carrying away liquid trade refuse (f), nor has it reference to sewage disposal works. In the latter case, action would have to be taken on the ground that, for example, a nuisance had arisen from the bad management of such works. For the reasons mentioned, *ante*, the M. of H. do not favour the alternative practice of appointing some person to carry out the work. The practice and procedure will be found discussed in greater detail elsewhere (g).

There is a somewhat analogous provision in sect. 7 of the P.H. (Smoke Abatement) Act, 1926 (h). If a county council resolve that a local authority within the county have failed to perform their duties under sect. 92 of the P.H.A., 1875, in respect of smoke nuisances, and make complaint to the Minister, or, if a local authority after being required to do so by the Minister fail to make the requisite bye-laws under the Act of 1926, the Minister may hold an inquiry. If he is then satisfied that there has been default on the part of the local authority, he may by order authorise the county council to act either for a definite period or until directions to the contrary are given. [572]

**L.G.A., 1929.**—Sect. 57 (3) of this Act (i) is the provision replacing sect. 299 of the P.H.A., 1875, as respects district councils and non-county borough councils. The section is somewhat wider in its terms in that the Minister may act on his own initiative and is not compelled

(c) Obviously this plan was not appropriate to a county borough council in default.

(d) 13 Statutes 750.

(e) See *ante*.

(f) *Pasmore v. Oswaldtwistle U.D.C.*, [1898] A. C. 387; 33 Digest 22, 97.

(g) See title APPEALS TO MINISTERS at p. 301 of Vol. I.

(h) 13 Statutes 1160.

(i) 10 Statutes 923.

to wait first for a complaint to be lodged. It should also be observed that instead of handing the administration over to "some person," the work is under this section handed over to the county council to perform. This is the more modern procedure. [573]

**L.G.A., 1894.**—Under sect. 16 (*k*) a parish council has a right of complaint against a R.D.C. in terms similar to those employed in sect. 299 of the P.H.A., 1875, already discussed. Complaint may be made as to default in providing sufficient sewers; maintaining existing sewers; providing a water supply; enforcing any provision of the P.H.A. which it is the duty of the R.D.C. to enforce; maintaining and repairing a highway.

Complaint is made to the county council who, if satisfied after due inquiry that it is well founded, may transfer the performance of the functions to themselves. It was pointed out that under the P.H.A., 1875, the Minister could not act on his own initiative, but that he had such powers under sect. 57 (3) of the L.G.A., 1929. Sect. 57 (3) also applies here, and accordingly the Minister may act under that section in cases falling under sect. 16 of the 1894 Act in addition to the county council's powers here described.

Sect. 16 refers only to parish councils, but parish meetings are provided for in sect. 19 (8). Though the repair and maintenance of highways is mentioned in sect. 16 of the Act, this provision must be considered as virtually repealed, because, by sect. 30 of the L.G.A., 1929 (*l*), rural district councils ceased to be highway authorities and their duties in this respect were taken over by the county councils. It is true that under sect. 35 the county council may delegate their duties as a highway authority to a R.D.C., but the latter are then merely agents of the county council. Presumably the parish council may still draw the attention of the county council to a default on the part of the R.D.C. and the county council may under sect. 36 (1) of the 1929 Act do anything necessary to place the road in proper repair and condition (*m*).

A similar duty of protecting public rights of way and preventing encroachments on any roadside waste is conferred on a R.D.C. by sect. 26 of the L.G.A., 1894 (*n*). Similar machinery is provided for the intervention of the county council on the petition of a parish council should default be made (*m*). [574]

**L.G.A., 1933.**—Under sect. 141 (*o*), the procedure for altering urban or rural districts and parishes is laid down. It is the duty of the county council to hold a local inquiry, and if they fail to do so or fail to make an order consequent upon an inquiry held, the Minister, on the application of the authority who made the original proposals, may under sub-sect. (6) act instead of the county council. He must give an opportunity for interested parties to be heard and, having done so, he may make such order as the county council might have made.

In the same way where a county council fail to make a proposal for the second review of county districts under sect. 146 (*p*), the council of a county district may complain to the Minister under sub-sect. (5) of that section, or he may act on any other information before him.

(*k*) 10 Statutes 788.

(*l*) *Ibid.*, 904.

(*m*) The procedure for the acquisition of the powers of a R.D.C. by a county council is prescribed by s. 63 of L.G.A., 1894; 10 Statutes 816.

(*n*) *Ibid.*, 795.

(*o*) 26 Statutes 380.

(*p*) *Ibid.*, 384.

Upon being satisfied that there is a *prima facie* case for making the change, the Minister may set in motion and carry out the procedure for making the necessary change by an order under sub-sect. (5). [575]

**Education Act, 1921.**—A local education authority who fail to fulfil any of their duties under this Act (including a failure to provide additional public school accommodation) may be compelled to do so by an order of the Board of Education under sect. 150 of the Act (*g*), which may be enforced by a *mandamus*. The Board may also under sect. 151, on the default of a local education authority (i.) make orders for recognising as managers any persons acting as managers and rendering valid any act which appears to be invalid by reason of the default; and (ii.) pay to the managers certain expenses incurred and for which provision should have been made by the authority. [576]

**Housing Act, 1930.**—Provision has been made in this Act to ensure that the elaborate scheme contained therein for improving the housing conditions in the country shall not be made abortive in an area by reason of the refusal or failure of one of the local authorities concerned to carry out their duties.

Under sect. 35 (*r*) complaint may be made to the county council by certain specified authorities or persons, that a R.D.C. have failed to exercise their powers under the Housing Acts, 1925 or 1930. The county council, if satisfied after holding a public local inquiry that there has been default, may make an order declaring the district council in default and transferring to themselves all or any of the powers of that council. Similarly if the county council have failed or refused to make an order on a complaint or have made a defective order, complaint may be made to the Minister, who then has power to make an order instead of the county council, or enlarge the scope of the order complained of.

The Legislature having once commenced to insert provisions which pre-suppose that bodies with statutory powers may fail to exercise them, have in this instance been forced to carry the matter to its logical conclusion, and in consequence (*s*) the Minister, on complaint made that the county council have failed to exercise the powers so transferred, may limit a time within which those powers are to be exercised or make an order rendering any of those powers exercisable by himself. Similar powers are given to the Minister by sects. 52—54 (*t*) as respects local authorities not being rural district councils. [577]

**Town and Country Planning Act, 1932.**—Similar provisions to those contained in the Housing Act, 1930, will be found in the above statute. By sect. 36 of the Act (*u*), the Minister has power where he is satisfied that a scheme ought to be prepared as respects any land, to require the appropriate authority to prepare the scheme. If default is then made the Minister himself may act or in certain cases transfer the duty to the county council.

If the matter has proceeded one step farther and the local authority have failed to adopt a scheme which has been prepared, the Minister may order that the scheme be adopted or approve the scheme with or without modifications. Further control is provided in the case of an

(*g*) 7 Statutes 205.

(*s*) S. 36; *ibid.*, 424.

(*u*) 25 Statutes 507.

(*r*) 23 Statutes 423.

(*t*) *Ibid.*, 431—433.

existing scheme which the local authority have failed to enforce. The Minister's power in this case enables him to issue an order, enforceable by *mandamus*, requiring the authority to act, or in the alternative he may act in place of the authority. In certain specified cases he may require the county council to act in place of the authority. [578]

**Road Traffic Act, 1934.**—Notwithstanding the powers conferred upon non-county boroughs and urban and rural districts by sects. 161, 276 of the P.H.A., 1875 (*a*), and upon parish meetings and councils in rural parishes under sect. 7 of the L.G.A., 1894 (*b*), and the Lighting and Watching Act, 1883 (*c*), a county council may enter into an agreement under sect. 23 of the Act of 1934 (*d*) with the road lighting authority or other authority concerned, for the lighting or better lighting of any county road or part of it. Before exercising their powers, the county council must make known their views to the road lighting authority and allow them a reasonable time to carry out the work. Only when the road lighting authority fail to act can the county council do more in the matter. [579]

**Food and Drugs (Adulteration) Act, 1928.**—Under sect. 14 (*dd*) of this Act the M. of H. or the M. of A. may, if of opinion, after communication with the food and drugs authority that the authority have failed to execute or enforce any provisions of the Act in relation to any article of food and that this failure affects the general interests of the consumer or of agriculture in the United Kingdom, by order empower an officer to execute and enforce those provisions. The expenses incurred by either such Minister or his officer under any such order are to be paid by such food and drugs authority to such Minister on demand. [579A]

**Milk and Dairies (Consolidation) Act, 1915, and Milk and Dairies (Amendment) Act, 1922.**—By sect. 13 of the Act of 1915 (*e*), provision is made in case of a default by a local authority in fulfilling any of their duties under the Act or any Milk and Dairies Order. The Minister may, after holding a local inquiry, make such order as he thinks necessary to compel the authority to perform their duty. The order is enforceable by *mandamus*. Where the defaulting authority is a district council the Minister may transfer the performance of the duties to the county council and for this purpose sect. 63 of the L.G.A., 1894 (*f*), is applied.

The amending Act of 1922 contains a similar section (*g*) in so far as action by the Minister is concerned. In addition the Minister may take action on the complaint of a county council, and transfer the performance of the functions to them either for a definite period or until he gives directions to the contrary (*h*). [580]

**London.**—The P.H.A., 1875, does not apply to London, but by sect. 100 of the P.H. (London) Act, 1891 (*i*), the L.C.C., on it being proved to them that any metropolitan borough council have made default in doing their duty under the Act with respect to the removal of any nuisance, the institution of any proceeding, or the enforcement of any bye-law, may institute any proceedings and do any act which the borough

(*a*) 13 Statutes 692, 741.

(*b*) 10 Statutes 779.

(*c*) 8 Statutes 1186.

(*d*) 27 Statutes, title "Street and Aerial Traffic."

(*dd*) 8 Statutes 893.

(*e*) *Ibid.*, 871.

(*f*) 10 Statutes 816. This section contains the arrangements which are to follow on the transfer to a county council of the powers of a district council.

(*g*) S. 11; 8 Statutes 883.

(*h*) The procedure to be adopted will be that contained in s. 63 of L.G.A., 1894; 10 Statutes 816.

(*i*) 11 Statutes 1081.

council might have instituted or done for that purpose, and recover from the borough council in default all expenses so incurred if not recovered from any other person or incurred in any unsuccessful proceeding (k).

By virtue of sect. 101 of the same Act, on complaint being made by the county council to the Minister of Health, that a metropolitan borough council has made default in executing or enforcing any provision of the Act or of any bye-law thereunder which it is their duty to execute or enforce, the Minister of Health, on being satisfied of the truth of the alleged default and that the complaint cannot be remedied under the other provisions of the Act, may make an order limiting a time for the performance of such duty. If the duty is not performed within the time limit, the order may be enforced by *mandamus*, or the Minister may appoint the county council to perform the duty. In the latter case the county council has all the power of the defaulting authority, and can recover from the defaulting authority all the expenses incurred together with the costs of previous proceedings if not recovered from other persons (sub-sect. (2)). The county council may also, with the consent of the Minister, raise loans in the name of the defaulting authority for the purpose of the execution of their duties (sub-sect. (5)).

Sect. 101 of the P.H. (London) Act, 1891, has been applied by various other statutes, e.g. the Milk and Dairies (Consolidation) Act, 1915, sect. 20 (6) (l); the L.C.C. (General Powers) Act, 1909, sect. 17 (m) (as to the storage of food in tenement houses); the L.C.C. (General Powers) Act, 1922, sect. 13 (n) (as to filthy and verminous articles and premises); and the London Government Act, 1899, sect. 6 (4) (o) (as to enforcement of certain bye-laws and regulations).

By sect. 134 of the P.H. (London) Act, 1891 (p), the Minister of Health, on being satisfied that the Common Council of the City of London have made default in doing their duty with respect to nuisances under the Act, may authorise any officer of police of the City of London to institute any proceedings which the common council might institute with regard to such nuisances, and such officer may recover from the common council summarily, or in the county or High Court, any expenses incurred by him and not paid by the person proceeded against. By sect. 135 of the same Act the Minister has the same remedies against the common council as he has against borough councils under sect. 101, except that the L.C.C. cannot be appointed by the Minister to perform a neglected duty of the Common Council. [581]

(k) See *L.C.C. v. Bermondsey Borough Council*, [1915] 3 K. B. 305; 38 Digest 225, 563.

(l) 8 Statutes 876. (m) 11 Statutes 1299. (n) *Ibid.*, 1360.

(o) *Ibid.*, 1228. This sub-section also applies s. 100 of the P.H. (London) Act, 1891. (p) 11 Statutes 1095.

## DEFECTIVE CHILDREN

*See BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.*

## DEFERRED CHARGES

*See CONSOLIDATED LOANS FUND.*

## DEFICIENCY IN RATES

*See RATE ACCOUNTS.*

## DEFINITIONS (STATUTORY)

|  | PAGE |  | PAGE |
|--|------|--|------|
| GENERAL - - - - -                                  | 318  | Technical and Scientific Terms - - - - - | 322  |
| INTERPRETATION ACT, 1889 - - - - -                 | 318  | Words Judiciously Interpreted - - - - -  | 322  |
| INTERPRETATION CLAUSES - - - - -                   | 321  | Use of same word in a Different          |      |
| RULES AS TO JUDICIAL INTER-<br>PRETATION - - - - - | 321  | Sense - - - - -                          | 322  |
| General - - - - -                                  | 321  | Words of Limitation - - - - -            | 323  |
|  |      | Ejusdem Generis - - - - -                | 323  |

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*See also titles : ACT OF PARLIAMENT ;  
COMPUTATION OF TIME ;  
INTERPRETATION OF STATUTES.*

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**General.**—This article deals with the statutory definitions of certain words and phrases which have been included in the Interpretation Act, 1889, or other Acts of Parliament ; methods of construing the statutes themselves are dealt with under the title of **INTERPRETATION OF STATUTES**. It is customary in almost all modern Acts to include a definition clause, and this may include words already defined in an earlier Act, and may either apply the older definition or give the word a special meaning for the purposes of the later Act. As to the construction of both words and statutes, the final arbiters are the Courts of Law. Decisions on such definitions now comprise a numerous collection of cases, and reference should be made for the decisions on any particular definition to the heading "Words and Phrases" in the index of the English and Empire Digest (a). [582]

**Interpretation Act, 1889.**—In 1850, an Act (b) was passed "for shortening the language used in Acts of Parliament." This was repealed and replaced in a more comprehensive form by the Interpretation Act, 1889 (c). By sect. 1 of that Act (d), in every Act passed since 1850 words importing the masculine gender are to include females (e), and words in the singular are to include the plural, and *vice versa* (f), unless the contrary intention appears. The reason for this and some of the other definitions being retrospective to 1851 is that Lord Brougham's Act contained a similar definition. By sect. 2 (g), in relation to an offence punishable on indictment or on summary conviction, "person," unless a contrary intention appears, is to include a body corporate (h), and by sect. 19 (i) in every Act passed after 1889

(a) Vol. 48, pp. 1894—1954.

(b) 13 & 14 Vict. c. 21, commonly known as Lord Brougham's Act.

(c) 18 Statutes 992 *et seq.*, and see 27 Halsbury 127 *et seq.*

(d) 18 Statutes 992.

(e) See, however, the Sex Disqualification (Removal) Act, 1919 ; 10 Statutes 79.

(f) See *Re Clayton's Settled Estates*, [1926] Ch. 279 ; 42 Digest 679, 905.

(g) 18 Statutes 992.

(h) For discussion on this, see title **CRIMINAL LIABILITY OF LOCAL AUTHORITIES** ; and as to cases, see 13 Digest, pp. 353—357, 409, 410.

(i) 18 Statutes 1001.

" person " is to include any body of persons corporate or unincorporate, unless a contrary intention appears. By sect. 3 (j) in every Act passed since 1850, " month " is to mean calendar month (k), and by sect. 34 (l), in the measurement of any distance for the purposes of any Act passed after 1889, that distance is to be measured in a straight line on a horizontal plane. Any expression of time must be taken to refer to Greenwich time with a variation for summer time (m). Again, by sect. 3 of the Interpretation Act, 1889 (j), " land " is to include (n) messuages, tenements and hereditaments, houses and buildings of any tenure, and " oath " and " affidavit " are to include affirmations and declarations. An example of a general definition in the Act of 1889, treated differently in a definition clause in an Act dealing with a particular subject, is found in regard to the word " county." In sect. 4 of the Act of 1889 (o) it is said in Acts passed between 1850 and 1890 " to include a county of a city and a county of a town," but in the definition in sect. 305 of the L.G.A., 1933 (p), " county " means " administrative county," that is to say, the area under a county council. " Municipal borough " is defined in sect. 15 of the Act of 1889 (q), as any place for the time being subject to the Municipal Corporns. Act, 1882, but it is not defined in sect. 305 of the L.G.A., 1933. The reference in the definition to the Municipal Corporns. Act, 1882, should now be read as a reference to the provisions of the L.G.A., 1933, relating to boroughs ; see sect. 129 (1) of that Act (r).

Sect. 12 of the Interpretation Act, 1889 (s), contains a list of twenty expressions to abbreviate the language used in statutes passed at any time before or after 1889, and substitutes such short names as " The Treasury," " The Board of Trade " and the " Postmaster-General," for the full title. Sect. 13 (t) supplies a list of judicial definitions for use in Acts, unless the contrary intention is expressed. These include " Supreme Court," " Court of Appeal," " High Court," " court of assize " and " assizes " (as including the Central Criminal Court) and " The Summary Jurisdiction Acts." Other useful definitions in sect. 13 are " court of summary jurisdiction," " petty sessional court," " petty sessional court-house," and " court of quarter sessions." One of the distinctions between a court of summary jurisdiction and a petty sessional court is that the latter must consist of two or more justices.

The definitions in some sections of the Act of 1889 have become obsolete owing to changes in the law. Such are " board of guardians " in sect. 16 (u) and " parish " as defined in sect. 5 (a) as a place for which a separate poor rate is or can be made, or a separate overseer is or can be appointed. Another example of a general definition which has been in part superseded is that of " district council " in sect. 21 of the L.G.A., 1894 (b). Originally the definition extended to the Act of 1894 " and every other Act of Parliament," but by the L.G.A., 1933, the words quoted were repealed except so far as they applied to any enactment passed before June 1, 1934. The reason for this was that it was thought

(j) 18 Statutes 993.

(k) As to cases on other definitions of " month," see 42 Digest, pp. 930—933.

(l) 18 Statutes 1004.

(m) Statutes (Definition of Time) Act, 1880, and Summer Time Acts, 1922 and 1925 ; 19 Statutes 419 *et seq.*

(n) As to the difference of " means " and " includes," see *posti*, p. 321.

(o) 18 Statutes 993.

(p) 26 Statutes 466.

(q) 18 Statutes 998.

(r) 26 Statutes 374.

(s) 18 Statutes 994.

(t) *Ibid.*, 996.

(u) *Ibid.*, 999.

(a) *Ibid.*, 993.

(b) 10 Statutes 792.

better in future Acts to refrain from using the expression "district council" to cover the council of a non-county borough as well as an U.D.C. or R.D.C.

Geographical and colonial definitions for all Acts passed after 1889 are given in sect. 18 (c) and include the expression "British Islands," as meaning the United Kingdom, the Channel Islands and the Isle of Man. By sect. 2 (1) of the Royal and Parliamentary Titles Act, 1927 (d), "United Kingdom" means Great Britain and Northern Ireland in every Act passed or public document issued after April 12, 1927. In all Acts of Parliament "England" includes both Wales and Berwick on Tweed (e).

By sect. 20 (f) of the Interpretation Act, expressions referring to writing in past or future Acts are to be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, and by sect. 21 (f) "statutory declaration," is to mean a declaration made by virtue of the Statutory Declarations Act, 1835 (g). "Financial year" (h) means in respect to any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending March 31, and the same period is now defined as the financial year of local authorities in sect. 305 of the L.G.A., 1933 (i). By sect. 25 (k) of the Act of 1889 "ordnance map" is to mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841-1870 (l). By sect. 26 of the Act of 1889 (m), where an Act passed after 1889 authorises or requires a document to be served by post, whether "serve," "give" or "send" or any other expression is used, the service is to be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post (n).

By sect. 30 (o), references to the Sovereign reigning at the time of the passing of an Act or to the Crown are to mean references to the Sovereign for the time being. By sect. 36 (p), "commencement" in reference to an Act of Parliament is to mean the time at which the Act is to come into operation, and where any Act is expressed to come into operation on a particular day, it is to be construed as coming into operation immediately on the expiration of the previous day.

By sect. 39 (q), the expression "Act" in the Act of 1889 is to include a local and personal Act and a private Act. Consequently such of the definitions already referred to as appear in the Act of 1889 extend to local Acts and private Acts, as well as the public general statutes. It also applies to Measures passed by the Church Assembly (r). [583]

(c) 18 Statutes 1000.

(d) 3 Statutes 191.

(e) Wales and Berwick Act, 1746, s. 3; 18 Statutes 969.

(g) 8 Statutes 194.

(f) 18 Statutes 1001.

(i) 26 Statutes 465.

(h) S. 22; 18 Statutes 1001.

(l) 2 Statutes 117 *et seq.*

(k) 18 Statutes 1002.

(m) 18 Statutes 1002. Methods of serving "notices" are included in many modern Acts, e.g. s. 286 of the L.G.A., 1933; 26 Statutes 457.

(n) As to prepayment of postage, see *Walthamstow U.D.C. v. Hemwood*, [1897] 1 Ch. 41; 22 Digest 370, 3785, and also 22 Digest, pp. 368-370.

(o) 18 Statutes 1003.

(p) *Ibid.*, 1005.

(q) *Ibid.*, 1006.

(r) See the Interpretation Measure, 1925; 6 Statutes 80.

**Interpretation Clauses.**—As already mentioned, in nearly every Act now passed there is an interpretation clause defining the terms used in the Act, in which the definition given in the Interpretation Act is sometimes repeated, with a variation or amendment, for no section of the Interpretation Act applies if a contrary intention is expressed. For an example of a simple word that has been defined in many various ways in many Acts, see in the title ANIMALS, KEEPING OF, the various definitions of "animal" (s). For highly technical definitions which have changed with the alteration in the law on the subject, see the definitions, such as "insurance year" in the Unemployment Insurance Acts (t). This was changed to "benefit year," in the Act of 1927 (u), and is now re-defined in sect. 4 of the Unemployment Insurance Act, 1934.

In some Acts, instead of the words "unless the contrary is expressed," the words "if not inconsistent with the context" are used to cover exceptions from the general definition, as in sect. 4 of the P.H.A., 1875 (a).

The differences in meaning of the words "mean" and "include", or "extend to" and "apply to", has been much discussed. It was said in *R. v. Kershaw* (b), that "means" limits the interpretation to the definition expressed, and in *Portsmouth Corpn. v. Smith* (c), that the words "shall include" mean "shall have the following meanings in addition to the popular meaning." The word "include" may be equivalent to "mean and include" and so have an excluding effect (d). A statutory definition, preceded by the word "includes" only, is not exhaustive (e). [584]

**Rules as to Judicial Interpretation.**—The many rules as to the interpretation of statutes generally, and as to the interpretation of words, are to be found in the judgments on cases relating to quite other points of law (f). The following are given as the clearest statements in regard to each rule. [585]

**General.**—In *R. v. Pearce* (g), Mr. Justice LUSH said, "An interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." The sound principle in dealing with a statutory enactment is to construe plain words in their natural sense (h). Where an ambiguous word such as "houses" is used in a statute, it is to be interpreted in accordance with the context and object of the statute (i). In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be

(s) *Ante*, Vol. I., p. 294.

(t) E.g. s. 47 of the Act of 1920; 20 Statutes 687.

(u) S. 16; 20 Statutes 727.

(a) 13 Statutes 624—626. For a useful list of the expressions defined in the P.H.A. and other Acts, see pp. 74—79 of the Index to Lumley, 10th ed.

(b) (1856), 20 J. P. 741.

(c) (1883), 13 Q. B. D. 184, at p. 195; 26 Digest 274, 128.

(d) *Dilworth v. Commissioners of Stamps*, [1899] A. C. 99, at p. 106; 19 Digest 586, 182.

(e) *Williams v. Morgan* (1921), 85 J. P. 192; 42 Digest 864, 163.

(f) As already mentioned, an alphabetical list is to be found under the heading "Words and Phrases" in the Index to the Digest.

(g) (1880), 5 Q. B. D. 386; 42 Digest 680, 918.

(h) *Smeed, Dean & Co. v. Port of London Authority*, [1913] 1 K. B. 226; 42 Digest 645, 501.

(i) *B. Aerodrome, Ltd. v. Dell*, [1917] 2 K. B. 380; 42 Digest 645, 502.

something in the context or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show they are used in a special sense different from their ordinary grammatical sense (*k*). "It is a dangerous assumption to suppose that the Legislature foresees every possible result that may ensue from the less guarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out from various Acts this and that expression and skilfully piecing them together, lay a safe foundation for some remote inference" (*l*). A statute is to be construed in its popular sense, that is, of course, in that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it (*m*). In construing the meaning of a term in an Act of Parliament, the court will not adopt an unnatural sense because, in some Act which is not incorporated or referred to, such an interpretation is given to it for the purposes of that Act alone (*n*). In *Boon v. Howard* (*o*), Mr. Justice KEATING said, "I hold it to be an essential canon of construction that, if the words are susceptible of a reasonable and also of an unreasonable construction, the former construction must prevail." A stricter construction is necessary as regards a penal enactment.

In *Stephenson v. Higginson* (*p*), it was held that in construing an Act of Parliament every word must be understood according to its legal meaning, unless the context shows that the Legislature has used it in a popular or more enlarged sense; but in a penal enactment, where it is sought to depart from the ordinary meaning of the words used, the intention of the Legislature that the words shall be understood in a larger or more popular sense must plainly appear.  
[586]

*Technical and Scientific Terms.*—Technical words must have their technical meaning given to them unless the court can find something in the context to the contrary (*q*). Mr. Justice JAMES, in *The Schiller (Cargo Ex)* (*r*), said: "I base my decision on the words of the statute as they would be understood by plain men who knew nothing of the technical rule of the Court of Admiralty." [587]

*Words Judicially Interpreted.*—As to words judicially interpreted there is a well-known principle of construction that where the Legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted (*s*). [588]

*Use of same word in a Different Sense.*—It is a sound rule of construction to give the same meaning to the same word occurring in

(*k*) *Victoria City Corp. v. Vancouver Island (Bishop of)*, [1921] 2 A. C. 384; 42 Digest 645, 503.

(*l*) Lord LOREBURN, in *Nairn v. St. Andrews University*, [1909] A. C. 147; 42 Digest 644, 498.

(*m*) *Grenfell v. Inland Revenue Commissioners* (1876), 1 Ex. D. 242; 42 Digest 619, 198.

(*n*) *Macbeth & Co. v. Chislett*, [1910] A. C. 220; 42 Digest 662, 712.

(*o*) (1874), L. R. 9 C. P. 277; 42 Digest 624, 250.

(*p*) (1851), 3 H. L. Cas. 638; 42 Digest 681, 330.

(*q*) *Laird v. Briggs* (1881), 19 Ch. D. 22; 42 Digest 681, 334; *Mason v. Bolton's Library, Ltd.*, [1913] 1 K. B. 88, *per FARWELL, L.J.*, at p. 90; 42 Digest 681, 341.

(*r*) (1877), 2 P. D. 145; 42 Digest 619, 200.

(*s*) *Jay v. Johnstone*, [1893] 1 Q. B. 25; 42 Digest 669, 801; *Barras v. Aberdeen Steam Trawling and Fishing Co.*, [1933] A. C. 402; Digest (Supp.).

different parts of an Act of Parliament (*t*), and Lord Justice TURNER said in *Re National Savings Bank Association, Ltd.* (*u*), "I do not consider that it would be at all consistent with the law, or with the course of this court, to put a different construction upon the same word in different parts of an Act, without finding some very clear reason for doing so." But it is a rule of construction that where, in the same Act and in relation to the same subject-matter, different words are used, the court must see whether the Legislature has not made the alteration intentionally and with some definite purpose; *prima facie* such an alteration would be considered intentional (*a*). Where an Act is amended and larger words are used in the amending Act than were used in the principal Act, the presumption is that such larger words were used intentionally, and they must have a meaning given to them accordingly (*b*). [589]

*Words of Limitation.*—Words of limitation are not to be read into a statute if it can be avoided. Mr. Justice BOWEN said in *R. v. Liverpool JJ.* (*c*), "One objection which to my mind is almost conclusive is this, that so to construe the section is reading into it words which limit its *prima facie* operation, and make it do something different from and smaller than what its terms express." One of the safest guides to the construction of sweeping general words, which it is difficult to apply in their full literal sense, is to examine other words of like importance in the same instrument (*d*). [590]

*Eiusdem Generis* (*e*).—It is a well-known rule of construction that where there are general words following a specific enumeration, the general words must be confined to subjects *eiusdem generis* as those specified (*f*). This has been defined again by COLERIDGE, J. (*g*), thus: "When general words follow specific words previously enumerated, they must be construed to mean something of the same kind as those which went before," in a case where he held that the general words "tenements and hereditaments" did not include pipes, plugs and apparatus fixed in the ground. It has also been decided, however, that the general words of a statute beginning with inferior persons do not extend to superior persons (*h*), in a case where an action was brought against a sheriff, and the words of the Act referred to "collectors" and "any other person or persons." [591]

(*t*) Mr. Justice CLEASBY in *Courtauld v. Legh* (1869), L. R. 4 Exch. 126; 42 Digest 632, 345.

(*u*) (1866), 1 Ch. App. 547; 42 Digest 632, 344.

(*a*) *Brighton Parish Guardians v. Strand Union Guardians*, [1891] 2 Q. B. 156; 42 Digest 632, 354.

(*b*) Lord ESHER in *Hurlbatt v. Barnett & Co.*, [1893] 1 Q. B. 77; 42 Digest 670, 807.

(*c*) (1883), 11 Q. B. D. 638; 42 Digest 674, 851.

(*d*) *Blackwood v. R.* (1882), 8 App. Cas. 82; 42 Digest 674, 856.

(*e*) For the numerous examples of this rule, see 42 Digest, pp. 672—673.

(*f*) Lord CAMPBELL in *R. v. Edmundson* (1859), 2 E. & E. 77; 42 Digest 673, 840.

(*g*) *East London Waterworks Co. v. Mile End Old Town Trustees* (1851), 17 Q. B. 512; 42 Digest 673, 838.

*Copland v. Powell* (1823), 1 Bing. 369; 42 Digest 673, 845.

## DELEGATION OF HIGHWAY POWERS

| PAGE  | PAGE                              |
|---|-----------------------------------|
| PRELIMINARY OBSERVATIONS - - 324                | AGREEMENTS - - - - 331            |
| DELEGATION - - - - 326                          | INCIDENTAL FUNCTIONS - - - 333    |
| URBANISATION OF RURAL DISTRICT 328              | ROAD OFFICERS - - - - 334         |
| URBAN ROADS OF A RURAL<br>CHARACTER - - - - 329 | RELINQUISHMENT OF DELEGATION 335  |
| APPEALS TO MINISTER - - - 329                   | DETERMINATION OF DELEGATION - 336 |
| INCIDENTAL CONDITIONS - - - 330                 | LONDON - - - - - 336              |

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Special reference in connection with the subject of delegation of highway powers should be made to the titles HIGHWAY AUTHORITIES, ROAD GRANTS AND ROADS CLASSIFICATION. A reference should also be made, if necessary, to the title ROADS OR STREETS under which will be found a complete list of all titles dealing with this subject with an indication of the scope of each and of their interconnection.

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**Preliminary Observations.**—Prior to the operation of Part III. of the L.G.A., 1929 (*a*), the highways repairable by the inhabitants at large in a borough or urban district were vested in the borough or U.D.C. (*b*). The highway authority in a rural district was the R.D.C. (*c*).

These authorities maintained all the highways within their respective areas, with the exception of "main roads" (consisting of the trunk roads and main arteries of traffic), which were maintained by the county councils (*d*).

By sect. 17 (2) of the Ministry of Transport Act, 1919 (*e*), the Minister of Transport was authorised to classify roads for the purpose of grants by him, and practically all the main roads were ultimately classified, together with a limited number of other important highways, which had not been "mained" and taken over by the county council. The classified roads were known as Class I. and Class II. roads, and lettered A and B respectively. Each road was given a distinctive number.

Public bridges within a county were originally repairable, under the common law, by the inhabitants at large, except any bridge within

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(*a*) 10 Statutes 903. The appointed day for the operation of Part III. of the L.G.A., 1929, was April 1, 1930.

(*b*) P.H.A., 1875, s. 149; 13 Statutes 685.

(*c*) L.G.A., 1894, s. 25; 10 Statutes 794.

(*d*) Highways and Locomotives (Amendment) Act, 1878, ss. 13, 15, 16; 9 Statutes 172; L.G.A., 1888, s. 11; 10 Statutes 693; Highways and Bridges Act, 1891, s. 4; 9 Statutes 192. For a summary of the highways which came within the definition of "main roads," see 9 Statutes 9.

(*e*) 3 Statutes 435.

a franchise or a bridge in respect of which a legal obligation to repair could be established against any other person. This nebulous responsibility of the inhabitants was transferred to the county councils by sect. 79 (2) of the L.G.A., 1888 (*f*), and by sect. 11 (1) of that Act (*g*), a duty was imposed on them of maintaining and repairing the bridges carrying main roads if previously they were repairable by the highway authority. Borough councils had the responsibility of repairing any bridge within their area which the borough had been legally liable to maintain or repair (*h*), other than a bridge which carried a main road.

[592]

The abnormal growth of motor traffic, and particularly heavy transport, after the Great War, resulted in an increase of the cost of maintaining highways, in rural areas in particular, out of all proportion to the reasonable responsibilities of the local communities, and strong representations were made to the Government during 1926 and 1927 for a wider and more equitable distribution of this burden. For a time, the difficulty was met by means of special Exchequer grants to the R.D.Cs., but by the Bill for the L.G.A., 1929, it was proposed that all highways in rural districts, together with the classified roads in urban districts, should be transferred to the county councils. This was ultimately effected by sects. 29—31 of the L.G.A., 1929 (*i*), whereby the main roads and other roads repairable by a highway authority in rural districts and all classified roads in non-county boroughs and urban districts were to be termed "county roads" and were vested in the county councils, together with any public bridge in the county which carried a county road other than county bridges.

The practical result of the Act of 1929 was to transfer to the county councils the full responsibility for the maintenance and improvement of (1) Class I. and Class II. roads in non-county boroughs and urban districts; (2) all roads in rural districts. As from April 1, 1930, the councils of non-county boroughs and urban districts were no longer responsible for the classified roads in their areas, and R.D.Cs. ceased to be highway authorities altogether. The rural authorities retained, however, their duties under the L.G.A., 1894, in regard to the protection of rights of way and the preservation of roadside wastes (*k*); and their power of making bye-laws with respect to the construction of new streets was not affected (*l*).

By sect. 32 of the Act of 1929 (*m*), an absolute right was reserved to the council of any non-county borough or urban district, with a population of over 20,000, of claiming to maintain the county roads within their area, and the great majority of such councils have exercised their right to undertake the maintenance and improvement of county roads, and where such a claim was made the county roads were vested in them. The resulting expenditure is met by means of contributions from the county council, any differences being determined by the

(*f*) 10 Statutes 750.

(*g*) *Ibid.*, 693.

(*h*) Municipal Corpsns. Act, 1882, s. 119; 10 Statutes 613.

(*i*) 10 Statutes 903—905.

(*k*) Under L.G.A., 1894, s. 26; 10 Statutes 795; see s. 30 (1) of the L.G.A., 1929, and *post*, p. 332, note (*h*).

(*l*) P.H.A., 1875, s. 157; 18 Statutes 689. A rural council before making any such bye-laws is to consult with the county council; L.G.A., 1929, s. 30 (4); 10 Statutes 904.

(*m*) 10 Statutes 906.

Minister of Transport, who has power to except certain arterial roads from transfer from the county council (*n*).

These drastic changes necessitated the transfer to the county councils of various incidental highway functions which had hitherto been discharged by borough and district councils. As respects rural districts, sect. 30 (2), (3) of the Act of 1929 accordingly directed that the functions specified in Part I. of the First Schedule to the Act should in future be exercised by the county council to the exclusion of the R.D.C., and those mentioned in Part II. should be exercised by the county council and by the R.D.C. if the county council consented. The transferred responsibilities included those arising under the Private Street Works Act, 1892 (*o*), and various duties and powers as regards the construction and repair of new roads and bridges, the purchase of premises for street improvements, the provision of crossings over footways, the repair of damage caused by excavations, prohibiting the deposit of building materials on roads, the placing of rails, wires, etc., over streets, and determining the width of streets, etc.

Sect. 31 (5) of the L.G.A., 1929 (*p*), which transferred to the county councils the classified roads in the boroughs and urban districts, similarly provided that the county council should have with respect to county roads in the borough or district the functions of a local authority under the various enactments specified in Parts III.—V. of the First Schedule to the Act. [593]

As the borough and U.D.Cs. were to continue to be responsible for the control of unclassified roads, and the rural authorities had acquired wide and extensive experience of the administration of highways since their creation by the L.G.A., 1894, provisions were inserted in the Act of 1929, allowing county councils to delegate to councils certain of their highway functions, though the principle of "those who pay the piper should call the tune" required that the over-riding control and responsibility should be retained by the county councils.

The general law relating to highways and bridges will be found under a great number of titles, a description of the scope and interconnection of which will be found under the title ROADS OR STREETS. What follows deals with the provisions of the Act of 1929, concerning delegation. [594]

**Delegation.**—Sect. 35 (1) of the L.G.A., 1929 (*q*), empowered the council of any district (*r*) wholly or partly within a county, to apply to the county council before June 28, 1929, for the delegation to them as from April 1, 1930, of the functions of the county council with respect to the maintenance, repair and improvement of, and other dealing with :

- (1) The whole of the unclassified roads (exclusive of county bridges) within the district, or such part thereof as was within the county.
- (2) All or any of the classified roads (exclusive of county bridges) within the district, or part within the county.

(*n*) L.G.A., 1929, s. 32 (3), proviso (a); 10 Statutes 907.

(*o*) 9 Statutes 193. Functions under s. 150 of the P.H.A., 1875; 13 Statutes 686, ceased to be exercisable in rural districts at all, the powers of the Act of 1892 being conferred on county councils in all rural districts.

(*p*) 10 Statutes 906.

(*q*) *Ibid.*, 910.

(*r*) "District" includes a non-county borough; see s. 134; 10 Statutes 971.

(3) All or any of the county bridges within the district, or part as aforesaid.

So far as the unclassified roads were concerned (which in general affected only the R.D.Cs.), the county council were required to grant the delegation unless they were satisfied that—having regard to the best means of promoting economy and efficiency in highway administration throughout the county, and to the particular circumstances of the district concerned—the application ought not to be granted (s).

As regards all classified roads and the county bridges, the county council were given unfettered discretion whether or not to grant the application (t), though this power was subject to the terms of sect. 32 of the Act, which gave to the councils of boroughs and urban districts with a population exceeding 20,000 the right to demand to maintain the county roads (though not county bridges) in their areas. [595]

Before October 1, 1929, every county council was required to prepare and submit to the M. of T. a statement specifying the applications for delegation and the county council's decisions in regard to them, and, in the case of any refusal concerning unclassified roads, the grounds for the same were to be indicated (u). Each borough or district council was to receive a copy of the portions of the statement affecting their area, and any council whose application for a delegation of functions relating to unclassified roads had been refused by the county council could appeal to the M. of T. within one month after the receipt of the prescribed particulars. If the Minister was satisfied that the application for delegation should have been granted, he was empowered to direct the county council to grant the application (a).

Most applications for delegation were submitted by councils during 1929 under the sub-sects. (1)—(4) of sect. 35; but sub-sect. (5) contains provisions which enable the council of any non-county borough or district, wholly or partly within a county, to whom highway functions are not for the time being delegated, to apply to the county council in 1934, 1939, etc., for the delegation of such functions (b). The Minister of Transport may, however, consent to the application being made in any other year, but it may be taken that the circumstances would have to be very exceptional (c).

The words "for the time being" enable an application to be made even if a previous delegation has been relinquished by the local council or determined by the county council under sub-sects. (6), (7) of sect. 35 of the Act of 1929 (d).

In the event of the county council refusing, or failing within three months, to grant the application—so far as it relates to unclassified roads—the council (*i.e.* R.D.Cs. only) may, within one month of such refusal or failure, appeal to the M. of T., who, if satisfied that delegation should have been granted, may by order direct the county council to grant the application as regards unclassified roads. [596]

Any application under sect. 35 (5) of the Act for delegation must be made to the county council before October 1 in the particular year; and if granted, the delegation will take effect as from April 1 following (e).

(s) L.G.A., 1929, s. 35 (2); 10 Statutes 910.

(t) *Ibid.*, s. 35 (3).

(u) *Ibid.*, s. 35 (4).

(a) *Ibid.*

(b) Or in any succeeding fifth year. L.G.A., 1929, proviso to s. 35 (5); 10 Statutes 911.

(c) See *post*, pp. 329, 330.

(d) 10 Statutes 911.

(e) L.G.A., 1929, s. 35 (8); 10 Statutes 911.

Sect. 35 of the L.G.A., 1929, refers throughout to districts in general, but it should be borne in mind that—so far as unclassified roads are concerned—any delegation will, as a general rule (*f*) only apply to rural districts, as urban authorities retain their unclassified roads under sect. 31 of the Act (*g*).

As the county councils have complete discretion with respect to county bridges, and they have, as a general rule, exercised this discretion so as to retain these under their administrative control, it is unnecessary to enlarge upon the legal position regarding such bridges (*h*).

If delegation under sect. 35 of the Act of 1929 be granted, this must operate in respect of the whole of the unclassified roads in the rural district. Functions cannot be delegated as regards some of the unclassified roads only. So far, however, as classified roads are concerned, a claim can be made in respect of one or more of these, though the county council have complete discretion as to whether they will delegate or not. They have a similar right as regards county bridges.

Delegation under sect. 35 of the Act does not result in a transfer of the vesting of the roads to the council to whom functions are delegated; they are merely agents for the county council, in whom the roads continue to be vested as the principal and primary authority. In the case, however, of roads which are claimed by the councils of boroughs or urban districts of over 20,000 population under sect. 32, such classified roads continue to be vested in the urban authority subject to their right to the financial benefits prescribed by the Act (*i*). [597]

**Urbanisation of Rural District.**—As a general rule, the unclassified roads within an urban area will continue to be vested in, and administered by, the borough council or U.D.C. (*k*), but an exception is created by sect. 31 (6) of the L.G.A., 1929 (*l*), which provides that where any area is constituted an urban district, the provisional or other order may provide that any unclassified roads within that area shall continue to be county roads.

Where the order contains such a provision, it may provide for contributions being made by the U.D.C. to the county council towards the maintenance and repair of these roads of an amount to be agreed, or in default of agreement determined by the M. of T.

In consequence of the change of status of the area from rural to urban, the general Exchequer grant paid to the U.D.C. will be increased (*m*). It may, however, be considered advisable that the unclassified roads (which were county roads when in the rural district) or some of them should continue to be county roads, notwithstanding

(*f*) See, however, L.G.A., 1929, ss. 31 (6), 37; 10 Statutes 906, 912; and *ante*, p. 325.

(*g*) But see the provisions of ss. 31 (6) and 37 (1) of the L.G.A., 1929, referred to on this and the next page under which unclassified roads in an urban district may be county roads and therefore subject to delegation.

(*h*) The present position is set out in the title BRIDGES, at pp. 245, 246 of Vol. I.

(*i*) Certain county councils have operated a system of highway advisory sub-committees as an alternative to delegation under the Act of 1929. Whilst there is no direct statutory sanction for these advisory committees, in certain localities advisory committees of this nature have rendered useful service.

It must be borne in mind that—even where delegation has been granted—the financial control must inevitably be exercised by the county council, and s. 36 of the L.G.A., 1929, imposes conditions incidental to delegation which leave the main executive control in the hands of the county council. See *post*, p. 330.

(*k*) P.H.A., 1875, s. 149; 13 Statutes 685.

(*l*) 10 Statutes 906.

(*m*) L.G.A., 1929, s. 91; 10 Statutes 941.

that the area becomes an urban district. If the order directing a continuance of the old highway status provides that contributions are to be paid by the U.D.C. to the county council out of their increased grant, these will be limited to contributions to maintenance and repair, as improvements to any such county roads must be carried out at the expense of the county council.

It will be seen that sect. 31 (6) refers only to an order constituting an urban district, and does not cover an order extending a borough or urban district by adding to it the whole or part of a rural district. In such instances, it is the usual practice that the order should transfer any unclassified road, not being a road which was a main road before the Act of 1929 came into operation, to the council of the extended borough or urban district from the county council (*n*). [598]

**Urban Roads of a Rural Character.**—Sect. 15 of the Highways and Locomotives (Amendment) Act, 1878 (*o*), allows a highway authority to apply to the county council for an order declaring a highway to be a main road, or as it is now called by sect. 29 (1) of the L.G.A., 1929, a county road.

Sect. 37 (1) of the Act of 1929 (*p*) creates a new ground for making such an application to the county council, namely, that the road is situate in a part of a borough or urban district which is of a rural character. In some such areas there are large tracts of land which are essentially rural in character, and cases may arise in which it would be unreasonable for the council of the borough or urban district to have to maintain unclassified roads in an area of this nature.

Under the Act of 1878, no appeal lay from the decision of the county council, but sub-sects. (2), (3) of sect. 37 of the Act of 1929 (*p*), give a right of appeal to the M. of T., who must, if required by the county council, hold a local inquiry before ordering the highway to be a county road (*q*). Such an appeal lies if the county council refuse to make an order, or fail for six months after the application to make an order, or having made such an order refuse or fail to confirm it. [599]

**Appeals to Minister.**—Reference has already been made (*r*) to the right of a borough or district council to appeal against the refusal of a county council to grant an application for delegation, and numerous appeals were heard during 1929–30—with widely varying results in different counties. Indeed, it is difficult to define the specific principles underlying the decisions which have been given by the M. of T., but the main issues have centred round the reference in sect. 35 (2) of the L.G.A., 1929, to “the best means of promoting economy and efficiency in highway administration throughout the county and to the particular circumstances of the district” (*s*).

(*n*) See e.g. clause 44 of the East Sussex Review Order, 1934, and clause 55 of the Kent Review Order, 1934. These orders may be purchased through H.M. Stationery Office, Kingsway, London, W.C.2.

(*o*) 9 Statutes 172.

(*p*) 10 Statutes 912.

(*q*) See note to L.G.A., 1929, s. 37, in Lumley's Public Health, p. 1903 (which embodies a detailed précis of the relevant statutes).

(*r*) See *ante*, p. 327.

(*s*) The Minister of Transport stated in the House of Commons in February, 1930, that there were 231 Appeals under s. 35 of the L.G.A., 1929, of which 88 were allowed and 115 disallowed—the remaining appeals being withdrawn or not proceeded with. The number of R.D.Cs. exercising delegated highway powers at April 1, 1934, was 175 out of a total number of 554 (see M. of T. Report on the Administration of the Road Fund for 1933–34, p. 70).

These words have resulted in county councils alleging overlapping of administration, due to different authorities operating in the same area, one on classified and one on unclassified roads. In such circumstances the local council might have their rollers, tar machines, etc., idle for a certain number of days during the year, whereas if they were being operated solely by the county council this plant could be used on neighbouring classified roads. A saving in administration charges is also sometimes urged, and certain county councils have stressed the question of general economy.

If, however, these considerations are carried too far, the general understanding which was embodied in the provisions of the Act as to delegation will clearly be nullified, and the local councils concerned may reasonably complain of a breach of faith. The provisions inserted in the Act of 1929 were the outcome of deliberations between the M. of T., the County Councils Association and the District Councils Associations, and statements were made in the House of Commons by responsible members of the Government which justified the expectation of the subordinate authorities that the Act would receive a generous construction from their point of view. Practical experience, however, has somewhat disturbed these expectations. There is no doubt that district councils can, in many cases, effectively and economically operate the delegated functions (*t*).

In addition to appeals against a refusal of an application for delegation, an appeal can also be made in the case of a determination by a county council of delegation of unclassified roads (*u*). 【600】

**Incidental Conditions.**—Sect. 36 of the L.G.A., 1929 (*a*), prescribes certain conditions which are to be incidental to the delegation of highway functions to a borough or district council. Every such council is to act as the agents for the county council, and the following conditions apply to every delegation :

- (1) The works to be executed and the expenditure to be incurred by the local council are to be subject to the approval of the county council;
- (2) The local council are to comply with any requirement of the county council as to the manner in which, and the persons by whom, any works are to be carried out, and with any general directions of the county council as to the terms of the contracts to be entered into ; and
- (3) The works are to be completed to the satisfaction of the county council.

If at any time the county council are satisfied, on the report of their surveyor, that any portion of a delegated road is not in proper repair and condition, they may give notice to the local council requiring them to place the road in proper repair and condition. If, within a reasonable time, this notice is not complied with, the county council may do whatever they consider necessary to place the road in proper repair and condition (*b*).

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(*t*) The statutory matters for consideration are (1) economy and efficiency in highway administration ; (2) the particular circumstances of the district. Regard must be had to all these factors, and delegation cannot be refused on the ground of economy alone ; L.G.A., 1929, s. 35 (2) ; 10 Statutes 910.

(*u*) See *post*, p. 336.

(*a*) 10 Statutes 911.

(*b*) L.G.A., 1929, s. 36 (1) ; 10 Statutes 911.

Irrespective of the conditions embodied in sect. 36, the express direction in the section that the district councils shall "act as agents for the county council" would in itself have given the county council power to impose all these conditions and generally to exercise extremely wide powers of control. A reference to any text-book on the law of Principal and Agent will show the extent to which an agent is subject to the overriding control and directions of his principal (*c*), and—now that all county roads are the financial responsibility of the county rate-payers (and not of the district council ratepayers, as such)—it is inevitable that the representatives of the county ratepayers should be the persons to dictate the general policy and procedure.

Many R.D.C.s. had a very real grievance prior to the Act of 1929, owing to the abnormally heavy burdens which they had to meet in order to maintain their highways in a fit condition to carry heavy traffic passing between the great industrial and residential centres, and one of the ways adopted of easing these responsibilities was to throw the burden upon the county as a whole—with the necessary consequence of financial and administrative control (*d*). [601]

**Agreements.**—In every case of delegation, it is desirable that a formal agreement should be made between the county council and the local council concerned, indicating the conditions and basis of the delegated administration.

While the detailed terms of such agreements necessarily vary in different parts of the country, the following is a summary of conditions which are frequently embodied.

- (a) The local council to act as agents for the county council.
- (b) The works to be executed and the expenditure to be incurred to be subject to the approval of the county council.
- (c) The local council to comply with the requirements of the county council as to the manner in which, and the persons by whom, the works are to be carried out, and with the directions of the county council as to the terms of contracts.
- (d) The works to be completed to the satisfaction of the county council.
- (e) The county council to have the right to deal themselves with roads not placed in a satisfactory condition within a prescribed period of notice (*e*).
- (f) Not later than the indicated date in each year, estimates to be submitted by the local council for all maintenance and repair work and the cost of exercising the incidental powers under the First Schedule to the Act.
- (g) Plans and estimates for proposed improvements to be undertaken in the ensuing year to be submitted to the county council, and the work not to be proceeded with until the county council have approved (*f*).

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(*c*) See Halsbury's Laws of England (2nd ed.), Vol. I, title "Agency," pp. 193 *et seq.*

(*d*) As the local council is only the agent of the county council, the latter remains the highway authority, and is liable as such for the acts and defaults of the local council in relation to the roads.

(*e*) The terms embodied in (a) to (e) inclusive merely summarise the statutory conditions prescribed by s. 36 of the Act.

(*f*) It is customary to leave to the local council independent discretion as regards minor improvements, up to an agreed amount. As, however, the approved estimates directly affect the county council budget, these should not be exceeded without express authority.

- (h) The local council to issue public advertisements by an agreed date in the early part of the year inviting tenders for haulage etc., and to submit the same to the county surveyor with recommendations.
- (i) Maintenance or improvement works which are carried out by contract to be made the subject of formal tenders—to be approved by the county surveyor.
- (j) The county council to approve the materials to be used (g).
- (k) The county council to take over all the quarries, plant and materials belonging to the local council and their highway depots, at an agreed price, or one determined by arbitration.
- (l) The local council to keep a special road account (in a form to be prescribed by the county treasurer) and a separate road banking account (h).
- (m) The local council to render to the county council quarterly returns and to forward any other information reasonably required.
- (n) The local council to submit, quarterly or half-yearly, a requisition to the county council for the amount estimated to be expended during the ensuing period. The requisition to be based on the annual estimate and to be subject to the approval of the county surveyor.
- (o) Rates of wages to be approved by the county council, and the wages paid weekly or fortnightly and in the manner indicated by the county council.
- (p) Appropriate terms applicable to the local council's surveyor and any other highway staff in the employment of the local council (i).
- (q) The district surveyor and his staff to comply with the reasonable instructions of the county surveyor.
- (r) Nothing in the delegation to affect the functions of the local council under the L.G.A., 1894, as regards rights of way and encroachments on roadside wastes, or any functions not being functions with respect to highways exercisable by an R.D.C. as successors to surveyors of highways (k).

(g) This approval is naturally given by the county surveyor or one of his assistants. The county council frequently reserve the right to purchase the road materials and to arrange for their delivery to the local council.

(h) It is not proposed to discuss the detailed financial arrangements between the local council and the county council. The latter, in their capacity of principals, can prescribe for their agents any machinery they think proper. Moreover, as the county councils have themselves been highway authorities since 1888, the procedure laid down will usually depend to some degree upon the practice in their own highway department.

(i) See *post*, p. 334.

(k) The duty of protecting rights of way and preventing encroachments on roadside wastes, was placed upon borough and district councils by the L.G.A., 1894, s. 26 ; 10 Statutes 795. Notwithstanding the transfer to the county council of all general highway functions in a rural district, these duties still remain with an R.D.C. under s. 30 (1) of the Act of 1929 ; see proviso.

As, however, all highways in rural districts are vested in the county council by s. 29 (2) of the L.G.A., 1929, the latter would appear to have concurrent powers under s. 11 (1) of the L.G.A., 1888, themselves as regards obstructions to, or interference with, county roads. In practice, therefore, it might be advisable, in certain cases, for the county council (and not the district council) to deal with certain infringements, particularly in cases where the abatement of the nuisance would be the appropriate remedy.

- (s) The local council to insure against all classes of liability affecting their employees and contractors in connection with highway administration.
- (t) Legal work relating to roads in the district or delegated functions to be carried out by the clerk of the county council (*l*).
- (u) Building and frontage lines to be subject to the approval of the county council.
- (v) Appropriate terms *re* town and country planning schemes—as far as they affect county roads.
- (w) Agreement to be subject to determination as prescribed by the Act (*m*).
- (x) Disputes or differences to be referred to arbitration of a person agreed or appointed by M. of T. **[602]**

**Incidental Functions.**—Where under sect. 35 of the L.G.A., 1929 (*n*), highway functions have been delegated by a county council to the council of a borough or district, that council discharges as agents for the county council the functions of the county council under the enactments mentioned in Part I. or Part III. of the First Schedule to the Act of 1929 (*o*), except so far as such functions relate to roads with respect to which functions are not delegated to the district council.

Part I. of this schedule relates to rural districts, and Part III. to boroughs and urban districts, but the general discharge of such functions is to be subject to such conditions as the county council may impose (*p*).

The functions to be exercised in a rural district by the county council under the enactments specified in Part I. of the First Schedule, include those under the Private Street Works Act, 1892, and under various sections of the P.H.A., 1875, and the amending P.H.As. of 1907 and 1925 (*q*).

The functions which are to be exercised in boroughs and urban districts as regards county roads are set out in Part III. of the First Schedule, and include powers (1), (2), (4), (7), (9), (10), (12), (13), mentioned in note (*q*) below. **[603]**

As regards the Private Street Works Act, 1892, however, or the exercise of any other of the scheduled functions, if for any such purpose the local council desire to make a contribution or incur expenditure which the county council consider is not properly chargeable as general county expenses, the local council may defray the expenditure and borrow the necessary money (*r*).

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(*l*) An exception should be made in appropriate cases of work under the Private Street Works Act, 1892.

(*m*) See L.G.A., 1929, s. 35 (6)—(8); 10 Statutes 911.

(*n*) 10 Statutes 910.

(*o*) *Ibid.*, 975, 977.

(*p*) L.G.A., 1929, s. 36 (2), proviso (a); 10 Statutes 912. See *ante*, p. 330.

(*q*) The provisions of the P.H.As. scheduled in Part I., include powers to (1) make agreements for the construction of new roads; (2) construct public bridges over or under canals; (3) make agreements as to the repair of roads; (4) acquire premises for street improvements; (5) execute private street works and recover the cost; (6) repair highways on behalf of persons independently liable; (7) approve crossings for cattle, etc.; (8) require owners to make urgent repairs in private streets; (9) repair damage to footways caused by excavations, etc.; (10) prohibit deposit of building materials or excavations; (11) prevent water flowing on footpaths, and soil, etc., being washed into streets; (12) prohibit placing of rails, etc., over streets; (13) license bridges over streets; (14) prohibit erection of bridges in certain cases; (15) declare new streets for purpose of bye-laws and determine width thereof and also to vary the width of carriageways and footways in private streets.

(*r*) L.G.A., 1929, proviso (b), s. 36 (2); 10 Statutes 912.

Sect. 15 of the Private Street Works Act, 1892 (*s*), enables an urban authority to contribute towards the expenses of any private street works. This power in rural areas is transferred to the county council by sect. 30 (2) of the Act of 1929, and can only be exercised by the R.D.C. as agents for the county council as regards delegated roads subject to the financial restrictions already mentioned.

As all the functions under the Private Street Works Act, 1892, are now exercisable in rural districts exclusively by the county council (*t*), the county surveyor, when preparing his specification of private street works under sect. 6 (2) of that Act, is required by Part I. of the schedule to consult the R.D.C. if and so far as the works include any sewers (*u*).

The inclusion of sect. 31 of the P.H.A., 1925 (*a*), in Part I. of the First Schedule to the L.G.A., 1929, as to the width of new streets, is expressly stated not to affect the application for the approval of plans being made to the R.D.C., and the normal procedure, therefore, will continue to apply, and that council will be responsible for seeing that new streets are properly constructed and of the width, etc., prescribed by the bye-laws. Sect. 31 of the P.H.A., 1925, enables the county council to require a new street to be laid out of any width they may determine, where in their opinion such street will form a main thoroughfare or the continuation of a main approach or means of communication between main approaches. This requirement is to be attached as a condition to the approval of the plans, but an appeal lies to quarter sessions under sect. 7 of the P.H.A. Amendment Act, 1907 (*b*), as applied by sect. 7 of the Act of 1925, and there are provisions in certain cases for compensation where an increased width is required. [604]

Where highway functions have not been delegated to an R.D.C., it is clearly necessary that the county council should be advised within the prescribed seven days of the receipt of any such plan, but if the rural council are exercising delegated functions under sect. 35, it will not be necessary for them to notify the county council of applications for the approval of plans unless the county council require them to do so as one of the conditions of delegation (*c*).

Although normally the provisions of the P.H.A. Amendment Act, 1907, must be put in force by an order of a Government department in a borough or district, and the provisions of the P.H.A., 1925, are adoptive, a footnote (*d*) to the First Schedule to the L.G.A., 1929, indicates that a county council may exercise functions under any enactment mentioned in it without the necessity of an adoption or an order of a Government department. [605]

**Road Officers.**—Where functions with respect to county roads are delegated by a county council to a R.D.C., the two councils may agree for the transfer or retention to or by either such council of any road officers, or for the joint user by both councils of the services of any

(*s*) 9 Statutes 202.

(*t*) Except where delegation has been granted, when the local council will operate the Act of 1892 as the agents for the county council; see s. 36 (2). The rural council's surveyor is the surveyor under the Private Street Works Act, 1892; see *post*, p. 335.

(*u*) L.G.A., 1929, Sched. I., Part I.; 10 Statutes 976.

(*a*) 13 Statutes 1126.

(*b*) *Ibid.*, 913.

(*c*) In practice it would appear advisable for the county council to receive notification, even though delegation to the rural council has been granted.

(*d*) 10 Statutes 978.

officer (e). Subject to any such agreement, so long as the district council exercise the delegated functions, the general provisions of the L.G.A., 1929, for the transfer of all road officers to the county council do not apply.

As from the date, however, on which such functions cease to be exercised by the district council in consequence of their relinquishment by the district council, or the determination of the delegation by the county council, the general provisions as to transfer of officers and superannuation and compensation of road officers, extend to the district council and their officers (e).

"Road officer" means an officer employed as the road surveyor of a highway authority, or employed under the control of such a surveyor in the surveying, making, maintenance or repair of roads (f).

As regards road officers who are in the service of borough or U.D.Cs., they will continue as such, because these authorities retain their unclassified roads, involving the retention by them of their general highway department. This position does not arise in the case of R.D.Cs., who ceased under sect. 30 of the Act (g), to be highway authorities on April 1, 1930.

Where delegation is in force in a rural district, the surveyor of the R.D.C. is to be the surveyor for the purposes of the Private Street Works Act, 1892 (h).

In order to enable the M. of T. to defray half the salary of a highway surveyor to a district council to whom highway functions have been delegated, it is important that any provision in the agreement of delegation which relates to the surveyor should accord with sect. 17 (2) of the M. of T. Act, 1919 (i), empowering the M. of T. to defray half the salary of the engineer or surveyor to a local authority responsible for the maintenance of roads (j).

After the L.G.A., 1929, had come into operation, the M. of T. was advised that a surveyor who was employed by a R.D.C. could not be said to be a surveyor to a local authority responsible for the maintenance of roads, even though the administration of the county roads had been delegated to the rural authority by the county council. This difficulty arose by reason of sect. 120 (k), whereby, subject to any agreement to the contrary, a rural road officer is not transferred to, and does not become an officer of, the county council where functions as respects county roads are delegated to a R.D.C. But the section authorises a county council and a R.D.C. to agree for the joint user by both councils of the services of any such officer, and the appropriate form of agreement (l) provides for the joint user of the particular surveyor's services, who is, however, deemed—for the purposes of the M. of T. Act, 1919—to be an officer of the county council as regards the discharge of his highway duties. [606]

**Relinquishment of Delegation.**—The council of any borough or district to whom functions have been delegated under sect. 35 of the

(e) L.G.A., 1929, s. 120; 10 Statutes 961.

(f) *Ibid.*, s. 134; 10 Statutes 971.

(g) 10 Statutes 904.

(h) L.G.A., 1929, s. 36 (2) (c); 10 Statutes 912.

(i) 3 Statutes 435.

(j) The M. of T. have ruled that these agreements can, for grant purposes, cover also the surveyors' technical assistants.

(k) 10 Statutes 961.

(l) A precedent of a suitable form of agreement which will enable a grant to be paid in respect of the highway surveyor of a R.D.C. undertaking duties on delegated roads was settled by the Associations of Authorities concerned and approved by the M. of T. This precedent is set out on pp. 332, 333 of the R.D.C.'s Official Circular, 1932.

L.G.A., 1929, may, by notice in writing to the county council, relinquish the functions delegated (m). Any such notice must be given before October 1 in any year, to take effect as from April 1 in the following year (n).

A borough or district council have an absolute discretion as regards the relinquishment of delegated highway responsibilities at any time (subject to the observance of the prescribed dates), and the county council are bound to act upon the notice. [607]

**Determination of Delegation.**—The county council may, by notice in writing to a borough or district council, terminate a delegation of functions (o). If, however, the notice relates to unclassified roads, the local council may, within one month after receiving the notice, appeal to the M. of T. If the Minister is satisfied that the delegation of functions as regards unclassified roads should not be determined, he may, by order, cancel the notice given by the county council.

Any such notice of determination must be given before October 1 in any year, to take effect as from the following April 1 (n).

During the year ending March 1, 1934, appeals were made to the M. of T. by seventeen R.D.Cs. against decisions of county councils determining delegations as respects unclassified roads. Nine of these appeals were allowed by the Minister and eight were disallowed, with the result that the delegations were cancelled (p). The grounds of the departmental decisions are not indicated, but the same general considerations arise as in the case of the refusal of a county council to delegate functions; see *ante*, pp. 329, 330.

Delegation may also be determined as the result of an order made by the M. of H. under sect. 46 of the L.G.A., 1929 (q), dealing with the re-arrangement of county districts. By the East Sussex Review Order, 1934, certain rural districts were abolished and replaced by newly formed rural districts. The original councils had had highway functions delegated to them, and they anticipated that this arrangement would continue, but the Minister of Health ruled that he had no power to insert in the order any provision preserving delegation in relation to the new rural districts. The view was expressed that the only course open was for the new R.D.Cs. to apply anew for the delegation of highway functions under sect. 35 (5) of the Act of 1929 (r).

On the other hand, in the later Kent Review Order, 1934 (s), clause 57 not only extended to an area added by the order to a non-county borough or urban district any delegation in force in the original borough or district, but put in force delegation in the new rural district of Bridge-Blean. [608]

**London.**—Sects. 29—39 of the L.G.A., 1929 (t), do not extend to London; see sect. 45 of that Act (u). The repeal of sect. 45 by the Town and Country Planning Act, 1932 (a), does not affect the position. [609]

(m) L.G.A., 1929, s. 35 (6); 10 Statutes 911.

(n) *Ibid.*, s. 35 (8).

(o) *Ibid.*, s. 35 (7).

(p) See pp. 11, 12 of report of M. of T. on the Administration of the Road Fund for 1933–34.

(q) 10 Statutes 916.

(r) As a general rule, an application under this sub-section can only be submitted in any fifth year subsequent to the passing of the Act, but the M. of T. may consent to the application being made in any other year. See *ante*, p. 327.

(s) The East Sussex and Kent Review Orders may be purchased from H.M. Stationery Office, Kingsway, London, W.C.2.

(t) 10 Statutes 903.

(u) *Ibid.*, 916.

(a) 25 Statutes 472.

## DEMOLITION

*See DANGEROUS BUILDINGS ; INSANITARY HOUSES.*

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## DEMOLITION ORDER

*See SLUM CLEARANCE.*

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## DENSITY OF BUILDINGS

|                              | PAGE |                            | PAGE |
|------------------------------|------|----------------------------|------|
| GENERAL - - - - -            | 337  | UNDER THE TOWN AND COUNTRY |      |
| UNDER THE P.H.A., 1875 - - - | 337  | PLANNING ACT - - - - -     | 338  |
| UNDER LOCAL ACTS - - -       | 338  | LONDON - - - - -           | 340  |

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*See also titles : BUILDING BYE-LAWS ;  
LONDON BUILDING ;  
PUBLIC HEALTH ;  
TOWN AND COUNTRY PLANNING.*

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**General.**—The question of the density of buildings is closely connected with that of overcrowding in general, and after having been dealt with in P.H. Acts and Housing Acts extending over a long period, in connection with ventilation, and the provision of open spaces in the rear or in the front of buildings, has become of increasing interest with regard to slum clearance schemes. It was, however, realised by the beginning of this century that the matter was also of importance in regard to amenities, and appropriate provisions were included in the Acts obtained for the early garden cities. The question of the density of buildings later became an important point in planning schemes.

[610]

**Under the P.H.A., 1875.**—By sect. 157 of the P.H.A., 1875 (*a*), every borough and U.D.C. were empowered to make bye-laws with respect, among other matters, to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings. This section was applied to all rural districts by the R.D.C. (Urban Powers) Order, 1931 (*b*).

By clause 52 of the model urban series of bye-laws as to new streets and buildings (*c*), every person who erects a new domestic building for human habitation must provide an open space in front of the building,

(*a*) 13 Statutes 689. For the numerous cases on the subject, see Lumley 10th ed., pp. 361—365.

(*b*) S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(*c*) 1933. To be purchased through H.M. Stationery Office, price 1s. 3d.

extending to a distance of at least 24 feet to the boundary of any lands or premises immediately opposite, or to the opposite side of any street. But if the building fronts on a street of less width than 24 feet, the distance may be equal at least to the width of the street, plus one-half the difference between that width and 24 feet.

Clause 53 deals with the provision of an open space in the rear of a new domestic building for human habitation, and requires an open space of not less than 150 sq. feet to be provided. The distance across the open space from the rear wall of the new building is also regulated, and increases with the height of the building. The bye-law allows certain relaxations : (1) where the shape of the site is exceptional ; or (2) where the site abuts on two or more streets ; or (3) where the building is a re-erection of an existing building ; and in cases (2) and (3) if it is impracticable to comply with the general provision in the bye-law.

An open space in the rear of a building must be free from any erection, except a w.c., privy and an ashpit ; and an open space in the front of a building must be free from any erection other than a portico, porch, or step or other like projection from the building, or any gate, fence or wall not exceeding 7 feet in height. The size and position of any yard or open space belonging to a building are to be shown on the deposited plan (clause 74). [611]

**Under Local Acts.**—Most local Acts of borough councils now contain clauses elaborating the provisions as regards space about buildings in the P.H. Acts. For instance, by sect. 94 of the Taunton Corpn. Act, 1931 (*d*), if the M.O.H. is of opinion that a building proposed to be erected would stop ventilation, he may make a representation to the council, who may prohibit the erection. A similar appeal is given in such a case as is given against a demolition order by sect. 22 of the Housing Act, 1930 (*e*), that is to say, to a county court judge. By sect. 102 of the same local Act of 1931, bye-laws may be made under sect. 157 of the P.H.A., 1875, fixing the number of dwelling-houses which may be erected in one block or in one continuous row, and for the leaving of an open space for separating blocks or rows of dwelling-houses. [612]

**Town and Country Planning Act.**—Under the Town Planning Acts of 1909 and 1925, the question of density was dealt with in town planning schemes by limiting the number of houses to the acre. By sect. 11 of the Town and Country Planning Act, 1932 (*f*), planning schemes are to contain provisions for dealing with the matters mentioned in the Second Schedule to the Act. In para. 2 of that Schedule (*g*), buildings, structures and erections are mentioned, and in para. 3 private and public open spaces. By sect. 12 (1), provisions prescribing the space about buildings and limiting the number of buildings may be included in a planning scheme, and these may differ as respects different parts of the area to which the scheme applies. By sect. 19 (*h*), a scheme may provide that no compensation is to be payable in respect of any provision of the scheme which limits the number of buildings ; see under title COMPENSATION FOR TOWN PLANNING generally. Examples of such schemes may be found in the annual reports of the M. of H. in

(*d*) 21 & 22 Geo. 5, c. cii.

(*e*) 23 Statutes 413.

(*f*) 25 Statutes 484.

(*g*) *Ibid.*, 528.

(*h*) *Ibid.*, 492.

the parts dealing with town planning, e.g. *Bushey and Watford* (*i*). "The densities are four, six, eight and twelve to the acre. The grounds of the Royal Masonic Schools, the Royal Caledonian Schools and St. Margaret Schools are scheduled as intended private open spaces, without prejudice, however, to the right to erect additional school buildings."

*Cardiff* (*k*). "A number of large open spaces have been reserved, including riverside walks and beauty spots, and provision is also made for smaller playing fields and recreation grounds. While suitable areas adjoining the railways, the Glamorganshire canal and the rivers Taff, Ely and Rhymney, have been allocated for industrial purposes, a large part of the area is primarily residential in character and has been so allocated at densities of four, eight, ten, twelve and sixteen to the acre."

*Witney* (*l*). "The greater part of the area is agricultural; while a ring of land round each village is allocated to residential development at eight dwelling-houses to the acre, it is proposed to allocate the remainder to agricultural buildings and to dwelling-houses at a density of not more than one to three acres, with a view to securing grouped development." Statistics given in the Report for 1933-34 (*m*) show that the average number of houses to the acre in approved preliminary statements and schemes in that year was 1 to 4 in 8·9 per cent., 6 in 4·5 per cent., 8 in 15·4 per cent., 9 and 10 in 9·8 per cent., 12 in 30·6 per cent., 15 and 16 in 9·9 per cent., and 20 in no case. In the Model Clauses under the Act of 1932 (*n*), "density zone" means a "zone" or portion of the area shown in the map, indicating restrictions as to density. These are contained in clauses 33-36, and the object is to determine the number of residential buildings which may be erected on any given area of land. By clause 34 no dwelling-house or residential building is to be erected, and no building converted into a dwelling-house or residential building, in any density zone, upon land not included in a "land unit." The "land unit" is described in clause 33. The council, for the purpose of determining the number of buildings which may be erected on any land in the area, on the application of the person having control of the land, are to declare that the land is to form one or more "land units." The site of every existing house or residential building is to form a separate land unit, unless it exceeds the minimum area of land required for the building, in regard to the acreage of the site and the average number of buildings permitted, or unless the person having control of the site agrees to its inclusion in a land unit with other land. Land belonging to the applicant outside the area for which the application is made and land given by or purchased from the applicant for the purpose of a public open space or of allotments may be included, together with one-half the width of any road dedicated to the public on which the land abuts. A person who has applied under this clause for the declaration of a land unit and is aggrieved by the decision of the council may appeal to a court of summary jurisdiction in the manner provided in clause 71. [613]

By clause 35 each dwelling-house is to be reckoned as one building unit, but where a building other than a dwelling-house is proposed in the application, the council must decide as to how many building units it is to be reckoned. By clause 36 a table of density zones is given,

(*i*) Report for 1932-33, at p. 115.

(*k*) *Ibid.*

(*l*) *Ibid.*, p. 127.

(*m*) Report for 1933-34, at p. 170.

(*n*) Issued in February, 1935. Price 2s.

showing the maximum average number of building units per acre over each zone. The number of building units on a land unit must not exceed the number obtained by multiplying the number of acres in the land unit by the average per acre specified in the Table. Whether the land is situate within a single density zone, or within more than one, it must not exceed the sum of the numbers obtained by multiplying the number of acres in the land unit within each zone by the average per acre specified in the Table for that zone. In certain cases the council may authorise a reasonable increase in the number of building units. In notes to clauses 35 and 36, alternative methods commended by the Minister are described, and it is pointed out that in areas where an unusually high density is called for, it may sometimes be desirable to retain some control over lay-out. This could be done by fixing a normal standard in the Table, but reserving power to permit a higher density for the area, subject to the right of the responsible authority to approve the arrangement of the buildings. Clauses 41 and 42 deal with space about buildings and to breaks in buildings. [614]

**London.**—The density of buildings in the administrative county of London is largely controlled by provisions in the London Building Act, 1930. By sect. 13 (*o*), no person may without the consent in writing of the council erect or extend any building so that any external wall or fence is within 20 feet from the centre of the roadway, where it is used for vehicles, or 10 feet where used for pedestrians only. Such distance may be increased or diminished at the discretion of the council, subject to certain conditions and limitations (*p*). The section also contains provisions with respect to the alteration or re-erection of buildings which existed on January 1, 1895, or at any time within seven years before that date.

By sect. 43 (*q*), a domestic building, erected after December 3, 1894, and having a habitable basement, must have in its rear and exclusively belonging thereto, an open space of at least 100 sq. feet (not necessarily adjoining the rear boundary of the premises) free from any erection thereon above the level of the adjoining pavement; and sect. 44 contains rules applicable to domestic buildings abutting on streets formed after December 31, 1894, with respect to the provision in the rear thereof of open spaces. There are special rules as to corner buildings, irregular sites and houses abutting on open spaces. Special provisions are also made with respect to domestic buildings (not being dwelling-houses to be inhabited by the working classes), which are to be erected on sites formerly occupied by similar buildings (*r*), and also with respect to buildings with stables in the rear (*s*). Working-class dwellings not abutting on a street must have about them, to the satisfaction of the county council, sufficient open space for the admission of light and air, but open space exceeding that which would be necessary under sect. 44 if the dwelling abutted on a street formed before January 1, 1895, cannot be required (*t*).

By sects. 48, 49 (*u*), where light and air is admitted to a domestic building by means of a court, such court and the windows opening out on to it must comply with certain requirements as to height and ventilation.

(*o*) 23 Statutes 225.

(*p*) See s. 13 (2), (4); *ibid.*

(*q*) 23 Statutes 236.

(*r*) S. 46; 23 Statutes 240.

(*s*) S. 56; *ibid.*, 245.

(*t*) S. 45; *ibid.*, 240.

(*u*) 23 Statutes 242.

The Town and Country Planning Act, 1932, applies to London. By sect. 2 thereof (a), the local authorities are, as respects the City of London the Common Council, and elsewhere in the County of London the L.C.C. [615]

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(a) 25 Statutes 472.

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## DENTAL INSPECTION AND TREATMENT OF SCHOOL CHILDREN

*See EDUCATION SPECIAL SERVICES.*

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## DEPUTY LIEUTENANT

*See LORD LIEUTENANT.*

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## DEPUTY LORD MAYOR

*See LORD MAYOR.*

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## DEPUTY MAYOR

*See MAYOR.*

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## DERATING

|   | PAGE |   | PAGE |
|---|------|---|------|
| INTRODUCTORY - - - - -                                      | 342  | (d) Storage - - - - -   | 354  |
| AGRICULTURAL HEREDITAMENTS - - - - -                        | 343  | (e) A Public Supply Undertaking - - - - -                           | 355  |
| Allotments - - - - -  | 344  | (f) Any other purposes not those of a Factory or Workshop - - - - - | 356  |
| Glasshouses - - - - -                                       | 344  | (g) Housing or Maintenance of Road Vehicles - - - - -               | 356  |
| Poultry Farms - - - - -                                     | 344  | PROPERTIES CONTIGUOUS - - - - -                                     | 357  |
| Land for Sport or Recreation - - - - -                      | 344  | FACTORIES AND WORKSHOPS - - - - -                                   | 357  |
| Woods, Nursery Grounds and Orchards - - - - -               | 345  | Altering, etc., any Article - - - - -                               | 358  |
| Pasture Ground - - - - -                                    | 345  | Beer Bottling - - - - -   | 359  |
| Excluded Land and Buildings - - - - -                       | 345  | Blending of Butter - - - - -  | 359  |
| INDUSTRIAL HEREDITAMENTS - - - - -                          | 345  | Coffee Grinding, etc. - - - - -                                     | 359  |
| Excluded Parts - - - - -                                    | 346  | Oil Blending - - - - -  | 359  |
| Mines - - - - -   | 347  | Rag Sorting - - - - -   | 359  |
| Mineral Railways - - - - -                                  | 348  | Seed Cleaning - - - - -   | 359  |
| Public Supply Undertakings - - - - -                        | 348  | Whisky Blending - - - - -   | 359  |
| Retail Shops - - - - -                                      | 348  | Wool Sorting - - - - -  | 359  |
| Apportionment of Value - - - - -                            | 348  | Pasteurising Milk - - - - -   | 359  |
| DERATING OF FACTORIES AND WORKSHOPS IN PRACTICE - - - - -   | 349  | Tea Blending - - - - -  | 360  |
| “ Occupied and used ” - - - - -                             | 349  | Scrap Metal Works - - - - -   | 360  |
| “ Primarily occupied and used ” - - - - -                   | 349  | FREIGHT - TRANSPORT HEREDITAMENTS - - - - -                         | 360  |
| PURPOSES OF OCCUPATION WHICH DISENTITLE TO RELIEF - - - - - | 351  | Premises excluded - - - - -   | 362  |
| The Purposes of—  |      | Entries in Valuation Lists - - - - -                                | 362  |
| (a) A Dwelling-house - - - - -                              | 351  | Relief Granted - - - - -  | 363  |
| (b) A Retail Shop ; Retail Repairs - - - - -                | 351  | LONDON - - - - -  | 363  |
| (c) Distributive Wholesale Business - - - - -               | 353  |   |      |

*See also titles : LONDON, RATING IN ;  
MACHINERY, RATING OF ;  
RAILWAYS, RATING OF.*

**Introductory.**—The term “ derating ” is not to be found in the statute book, but is in general use in relation to the total exemption or partial relief from rates on certain hereditaments granted under the provisions of the L.G.A., 1929 (*a*), and this title is restricted to that interpretation.

The legislative scheme, which culminated in the passing of the L.G.A., 1929, had a threefold purpose, namely : (1) the derating of industry ; (2) revision of the financial relations between local authorities and the Exchequer ; (3) administrative changes which had the effect of widening the area of charge of certain onerous rate services. The immediate occasion for the scheme was the urgent need for relief from the handicap which the burden of rates placed upon industry in the international market.

Apart from direct relief, the benefit of the relief granted under the Act to freight transport hereditaments is also required to be passed on to industry in the form of reduced charges for transport of goods.

The R. & V. (Apportionment) Act, 1928 (*b*), gave directions for the preparation of the valuation list so that hereditaments derated shall be shown separately, and Part V. of the L.G.A., 1929 (*c*), specifies the relief to be granted.

The Act of 1928 (*d*), does not specify that relief will be given, but the long title of the Act states that its purpose is to make provision with a view to the grant of relief from rates in respect of certain classes of hereditaments. For this purpose, the classes of hereditaments affected are to be distinguished in the valuation list, and the net annual values apportioned according to the extent of the user for various purposes.

The L.G.A., 1929 (*e*), provided for the discontinuance of certain government grants and for the distribution to local authorities of a new general Exchequer contribution in which the derating losses were made an important factor. As to this, see titles GENERAL EXCHEQUER GRANTS and GRANTS (*f*). The reorganisation of rating law necessary before any of the objects of the two Acts of 1928 and 1929 could be fulfilled was effected by the provisions of the R. & V.A., 1925. An example of this reorganisation is the rating of machinery (*g*).

The three classes of hereditament to be distinguished are (1) agricultural hereditaments ; (2) industrial hereditaments ; and (3) freight-transport hereditaments (*h*). **[616]**

#### AGRICULTURAL HEREDITAMENTS

The expression "agricultural hereditament" is defined as meaning any hereditament being agricultural land or agricultural buildings (*i*). Agricultural land means land used as arable, meadow, or pasture ground only, land used for a plantation or wood, or for the growth of saleable underwood, market gardens, nursery grounds, and orchards or allotments, and land exceeding a quarter of an acre used for poultry farming or as a cottage garden. Land occupied together with a house as a park ; gardens, other than those named ; pleasure grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse are excluded.

For the purpose of the above definition, it is mentioned that "cottage garden" means a garden attached to a house occupied as a dwelling by a person of the labouring classes. The size of the garden, however, must exceed a quarter of an acre. **[617]**

A "market garden," in the Agricultural Holdings Act, 1923, means a holding cultivated wholly or mainly for the purpose of the trade or business of market gardening (*k*). **[618]**

(*b*) 14 Statutes 713 *et seq.*

(*c*) 10 Statutes 927.

(*d*) 14 Statutes 713.

(*e*) 10 Statutes 883.

(*f*) For the general effects of the produce of rates and government grants of all kinds, see the title FINANCE.

(*g*) Before the passing of the Act of 1925 there had not been uniformity in practice. See how the Plant and Machinery (Valuation for Rating) Order, 1927 (S.R. & O., 1927, No. 480) ; 14 Statutes 793 ; and see title MACHINERY, RATING OF.

(*h*) The R. & V. (Apportionment) Act, 1928, s. 1 (1) ; 14 Statutes 713.

(*i*) *Ibid.*, s. 2 (1) ; *idid.*, 714.

(*k*) S. 57 ; 1 Statutes 114.

**Allotments.**—In the definition, these include allotment gardens within the meaning of the Allotments Act, 1922, that is to say, an allotment not exceeding 40 poles (a quarter of an acre) in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family (*l*).

Agricultural buildings are buildings, not being dwelling-houses, which are occupied together with agricultural land or which are or form part of a market garden; but in both cases they must be used solely in connection with agricultural operations thereon (*m*). As all agricultural land and buildings are exempted from rates by the L.G.A., 1929 (*n*), the definition of agricultural land is of importance. [619]

**Glasshouses.**—These appear to be land used as a market garden, when the definition of "agricultural buildings" is applied, and so long as they are used solely in connection with the operation of the market garden, glasshouses may be regarded as buildings "being or forming part of a market garden." The Central Valuation Committee take the view that a glasshouse used for growing fruit, vegetables or flowers for sale, either "is" itself a market garden or "forms part of" a market garden, and that a claim to relief in respect of it cannot properly be refused on the ground that the phrase "agricultural operations" is to be construed in a limited sense as meaning "farming operations" (*o*). [620]

**Poultry Farms.**—Those which exceed one-quarter of an acre are "agricultural land," and buildings occupied with the land and used solely in connection with poultry farming on the land, are "agricultural buildings." But land not exceeding one-quarter of an acre, used for the purpose of poultry farming, is not "agricultural land."

If the buildings are not used solely in connection with poultry farming on the land, as where, for instance, there are extensive buildings used for the housing of a large number of birds, only a few of which use the run, the buildings in such case could not be held to be used solely with the land, and they would not be entitled to relief (*p*). [621]

**Land for Sport or Recreation.**—The rating of sporting rights on agricultural land presents many difficulties, and is dealt with elsewhere (*q*).

It will be noted that to lose its right to relief, land must be kept or preserved mainly or exclusively for sport or recreation, and, in view of this, it is not thought desirable or necessary that land used only occasionally for purposes of recreation should be regarded as excluded from the meaning of "agricultural land." The definition, in fact, contemplates that the occasional user of agricultural land for sport or recreation shall not make it rateable (*r*). A racecourse is not entitled to derating. The definition of "agricultural land" excludes land used as a racecourse, without any qualification as to the extent to which it is so used (*s*). [622]

(*l*) S. 22 (1); 1 Statutes 316, and see title ALLOTMENTS.

(*m*) R. & V. (Apportionment) Act, 1928, s. 2 (2); 14 Statutes 714.

(*n*) S. 67; 10 Statutes 927.

(*o*) See Central Valuation Committee's revised series of Representations, p. 33.

(*p*) *Ibid.*, pp. 55-56.

(*q*) See title RATING OF SPECIAL PROPERTIES, and see C.V.C. revised series of Representations, pp. 59-63.

(*r*) Cf. *ibid.*, p. 55.

(*s*) See *ante*, p. 343.

**Woods, Nursery Grounds and Orchards.**—Land used for a plantation or a wood or for the growth of saleable underwood is included without qualification in the definition of agricultural land, but if it is occupied together with a house as a park, or is preserved mainly or exclusively for purposes of sport or recreation, it will not be agricultural land.

In the same way, nursery grounds and orchards are not to be rated. Buildings attached to nursery grounds would, however, appear to be rateable, unless they are occupied together with agricultural land and used for the nurseryman's operations. [623]

**Pasture Ground.**—Land used as arable, meadow, or pasture ground *only* is agricultural land. It appears to be clear that the word "only" cannot be applied with absolute strictness, and land may still remain agricultural within the definition, although incidentally or subsidiarily used for other purposes; but if the other uses are paramount or substantial, then the land can no longer be regarded as "agricultural land" (*t*). This view is supported by the other part of the definition, where land used for purposes of sport or recreation is only excluded if it is preserved mainly or exclusively for such purposes (*u*). [624]

**Excluded Land and Buildings.**—Land occupied with a house as a park is not an agricultural hereditament, and gardens (other than those named), pleasure grounds, and land kept or preserved mainly for purposes of sport or recreation, and land used as a racecourse, are also excluded (*u*).

Farm-houses and farm labourers' cottages are not entitled to relief under the Apportionment Act of 1928. They are excluded from the definition of agricultural buildings as being dwelling-houses (*a*). [625]

#### INDUSTRIAL HEREDITAMENTS

Industrial hereditaments are to be shown separately in the valuation list (*b*), and, where the hereditament is wholly industrial, rates are to be charged on one-fourth only of the net annual value (*c*), but, if not wholly industrial, then on a value apportioned in proportion to the use for industrial and non-industrial purposes.

An industrial hereditament (not being a freight-transport hereditament) is a hereditament occupied and used as a mine or mineral railway, or as a factory or workshop (*d*).

A hereditament occupied and used as a factory or workshop is not industrial, however, if it is primarily occupied and used for the purposes of (1) a dwelling-house; (2) a retail shop; (3) distributive wholesale business; (4) storage; (5) a public supply undertaking; or (6) any other purposes, similar or not to any of the preceding purposes, which are not those of a factory or workshop (*d*).

Any place used by the occupier for the housing or maintenance of his road vehicles, or as stables, must not be reckoned as part of the factory or workshop, even though it is situate within the precincts and is used in connection with it. Subject to these exceptions, the

(*t*) Cf. C.V.C. Resolution 75. Revised series, pp. 16, 17.

(*u*) R. & V. (Apportionment) Act, 1928, s. 2 (2); 14 Statutes 714.

(*a*) *Ibid.*

(*b*) *Ibid.*, s. I (1); 14 Statutes 713.

(*c*) L.G.A., 1929, s. 68 (1); 10 Statutes 928; R. & V. (Apportionment) Act, 1928, s. 4; 14 Statutes 717, and see R. & V.A. (Form of Valuation List) Rules, 1932 (S.R. & O., 1932, No. 395) and Circular 1278 (May 31, 1932).

(*d*) R. & V. (Apportionment) Act, 1928, s. 3 (1); 14 Statutes 715.

terms "factory" and "workshop" have the same meanings as in the Factory and Workshop Acts, 1901 to 1920 (e). In the Act of 1901 (f) a list of twenty-nine classes of factories and workshops is given. As these are named and defined in the statute, no dispute as to their title to relief arises, though there has been some difficulty in deciding whether some hereditaments come within the terms of the definitions.

In brief, the expression "factory" means a textile factory and a non-textile factory. The former are premises wherein machinery is worked by power in processes incident to the manufacture of cotton, wool, hair, silk, flax, etc. Non-textile factories consist of the works mentioned in Part I. of the Sixth Schedule, and, if power is used, of the premises mentioned in Part II. of the Schedule. Premises in which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes :

- (i.) the making of any article or of part of any article ; or
- (ii.) the altering, repairing, ornamenting, or finishing of any article ;  
or

(iii.) the adapting for sale of any article ;

and wherein power is used are also non-textile factories. Those premises in Part II. of the Sixth Schedule which are not factories are workshops, as are any premises, room, or place, not being a factory, in which any manual labour is exercised by way of trade or for the purposes of gain in or incidental to the purposes in (i.), (ii.) and (iii.) above (g).

The distinction between a factory and a workshop for the purposes of derating is largely immaterial, as both are entitled to relief. The main distinction between the two is that in a factory mechanical power is used, and in a workshop, manual labour only.

It may be noted that, for the purposes of the derating Acts, a place may be a factory or workshop though there is only one person working there (h), and it is not excluded by reason only that it is in the open air (i), so that an uncovered yard may be a factory or workshop. Moreover, as respects the twenty-nine classes of factories and workshops named in the Sixth Schedule to the Act of 1901, it is not specified that the manual labour must be exercised by way of trade or for purposes of gain. **[626]**

**Excluded Parts.**—If a place within the close, curtilage or precincts of a factory or workshop, is solely used for some other purpose, not that of the factory or workshop, it does not form part of the factory or workshop for the purposes of the Act of 1901, though it may form a separate factory or workshop (k). A room solely used for sleeping purposes is specifically excluded (l), but if the room is occasionally used for factory purposes, it would appear not to be right to exclude it from the factory or workshop.

If two or more properties within the same curtilage or contiguous

(e) R. & V. (Apportionment) Act, 1928, s. 3 (2). For a detailed consideration of the interpretation of these terms, see under the title FACTORIES AND WORKSHOPS.

(f) Factory and Workshop Act, 1901, s. 149, and Sixth Schedule ; 8 Statutes 593, 605.

(g) *Ibid.*, s. 149 (1).

(h) L.G.A., 1929, s. 69 ; 10 Statutes 929.

(i) Factory and Workshop Act, 1901, s. 149 (5) ; 8 Statutes 595.

(k) *Ibid.*, s. 149 (4) ; *ibid.*

(l) *Ibid.*, s. 149 (3), and see *Cardiff R.O. v. Cardiff Assessment Committee and Western Mail, Ltd.*, [1931] 1 K. B. 21, at p. 47 ; Digest (Supp.) ; 2 Butterworths' Rating Appeals, 1926-1931, p. 542 (parts of newspaper offices excluded).

to one another, are for some special reason (see *post*, p. 357) assessed separately for rating purposes, but are used as part of a single mine, mineral railway, factory or workshop, they are to be treated as if they were one for the purpose of determining whether they are industrial hereditaments (*m*). [627]

**Mines.**—In the definition of “industrial hereditament” (*n*), mine has the same meaning as in sect. 122 of the Coal Mines Act, 1911 (*o*), or sect. 41 of the Metalliferous Mines Regulation Act, 1872 (*p*), as amended by sect. 19 (2) of the Mining Industry Act, 1920 (*q*), as the case may require. But in addition “mine” also includes any premises or place or works, whether below ground or above ground, which are primarily occupied and used for draining or otherwise protecting the mine or any group of mines from damage; or are occupied and used for pumping or raising brine, for the purpose of manufacture or sale, from shafts, or wells, springs, or mines (*r*). Premises for pumping or raising brine, e.g. for private or municipal baths, are apparently excluded from the benefits of the Acts by this definition. The brine in such cases would probably be held not to be for manufacture or sale.

The Coal Mines Act, 1911, relates to coal mines, and mines of stratified ironstone, shale, and fire-clay (*s*), and in that Act “mine” includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in, adjacent to and belonging to the mine. But it does not include any part of the premises on which any manufacturing process is carried on other than a process ancillary to the getting, dressing, or preparation for sale of minerals (*t*).

In sect. 41 of the Metalliferous Mines Regulation Act, 1872 (*u*), the definition of “mine” varies only slightly from that in sect. 122 of the Act of 1911, as the term includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or for proving minerals, and all the shafts, levels, planes, works, machinery, tramways and sidings, both below ground and above ground, in and adjacent to a mine; and the term “shaft” includes “pit.”

The above definition is amended by the Mining Industry Act, 1920, which provides that the expression “mine” does not include any part of the premises on which any manufacturing process, other than a process ancillary to the getting, dressing, or preparation for the sale of minerals, is carried on (*a*).

It would appear from these carefully drawn definitions that the whole of the mines in England and Wales are industrial hereditaments within the meaning of that term, and are entitled to relief.

Quarries and pit-banks are not classed as mines, but are factories or workshops, and will share in the relief under that title (*b*).

That part of the mine premises, excluded from the definition, in

(*m*) R. & V. (Apportionment) Act, 1928, s. 3 (3); 14 Statutes 716.

(*n*) *Ante*, p. 345.

(*o*) 12 Statutes 139.

(*p*) *Ibid.*, 38.

(*q*) *Ibid.*, 176.

(*r*) R. & V. (Apportionment) Act, 1928, s. 3 (4); 14 Statutes 717.

(*s*) Coal Mines Act, 1911, s. 1; 12 Statutes 82.

(*t*) *Ibid.*, s. 122; 12 Statutes 139.

(*u*) 12 Statutes 38.

(*a*) S. 19 (2); 12 Statutes 176.

(*b*) Factory and Workshop Act, 1901, s. 149, Sixth Schedule, Part II. (26),

(27); 8 Statutes 593, 606,

which any manufacturing process is carried on which is not a process ancillary to the getting, or dressing, or the preparation of the minerals for sale, will not necessarily be excluded from the provisions of the Act of 1928. Premises, for instance, used for the manufacture of by-products, or as coke-ovens, will come in as factories or workshops. [628]

**Mineral Railways.**—A “ mineral railway ” is a railway or tramway or ropeway used primarily for the transport of minerals gotten from a mine to the railway, or dock, or canal, or between any two of them, and if the transport is to a private dock, then the dock is also to be included as part of the mineral railway (c).

The distinction between a mineral railway, which is here classed as an industrial hereditament, and a railway defined in sect. 5 of the Act (d) which is a freight-transport hereditament, is important, as the relief given to a mineral railway as an industrial hereditament is for the benefit of the occupier, but the relief to a railway which is a freight-transport hereditament is to be passed on to certain classes of users of the railway by way of reduced freight charges (e). [628A]

“ Public supply undertakings ” are excluded from the Act of 1928 (f). They are undertakings primarily carried on for the supply of gas, water, electricity, or hydraulic power for public purposes, or to members of the public, or to undertakings carried on under a special Act or order having the force of an Act (g). [629]

“ Retail shops ” are not entitled to relief (h), and the expression “ retail shop ” includes any premises of a similar character where retail trade or business (including repair work) is carried on (i). [629A]

**Apportionment of Value.**—If a hereditament is not wholly industrial but is primarily industrial, the values of the industrial part and the part non-industrial are to be apportioned, and shown separately in the valuation list (k).

In determining what proportion is industrial and what non-industrial, the hereditament is to be deemed industrial, with the exception of any part which is not a part of the mine, factory or workshop (l).

If the net annual value of the hereditament does not exceed £50, and it is primarily industrial, it is to be allowed as wholly industrial (m). The minor part, non-industrial, is not to be disallowed. This is a concession to the smaller factories and workshops, but certainly means a considerable saving of labour in valuation. In all other cases, if some part of the hereditament is found to be non-industrial, then if the part which is non-industrial does not exceed 10 per cent. of the net annual value of the industrial part, the hereditament is to be allowed as wholly industrial (m).

Where the net annual value of the non-industrial part exceeds 10 per cent. of the net annual value of the industrial part, the values must be apportioned. The non-industrial part is only to be treated as being non-industrial in so far as it exceeds 10 per cent. of the net annual value of the industrial part (m).

(c) R. & V. (Apportionment) Act, 1928, s. 3 (4); 14 Statutes 717.

(d) 14 Statutes 719.

(e) L.G.A., 1929, s. 136, and Eleventh Schedule; 10 Statutes 974, 1001.

(f) R. & V. (Apportionment) Act, 1928, proviso to s. 3 (1); 14 Statutes 715.

(g) *Ibid.*, s. 3 (4); *ibid.*, 717. See also p. 355. (h) *Ibid.*, s. 3 (1), proviso.

(i) *Ibid.*, s. 3 (4). (k) *Ibid.*, s. 4.

(l) *Ibid.*, s. 4 (2) (a); 14 Statutes 718, and see ss. 3 (2), (3), 4 (2) (c).

(m) *Ibid.*, s. 4 (2) (b).

A further provision (*n*) sets out the manner in which values are to be apportioned where two or more hereditaments are treated as one, as required in sect. 3 (3) of the Act. Its effect is that the percentages attributable to industrial and non-industrial purposes of the total net annual value of the hereditaments as united are to be applied to the hereditaments as separately valued. The whole of the hereditaments are to be treated as one and the non-industrial part of each hereditament is not to be allowed separately. [630]

#### DERATING OF FACTORIES AND WORKSHOPS IN PRACTICE

The definition of "industrial hereditaments" in sect. 3 (1) of the Act of 1928 (*o*), with its exceptions and proviso, has been found difficult to apply. [631]

**"Occupied and used."**—The first obstacle is the phrase "occupied and used."

It was contended that works and factories closed down were occupied and used within the intention of the Act, and were industrial hereditaments.

The Divisional Court decided, however, that a cotton mill not in work, but kept ready for work at short notice, was not occupied and used as a factory, and was not entitled to be derated as an industrial hereditament. AVORY, J., considered that, to bring premises within the privilege conferred by the Act, it must be shown not only that they are occupied as a factory, but also that they were at the material time being used as a factory (*p*). [632]

**"Primarily occupied and used."**—No definition is given of this expression, though it is essential that the test must be applied in all cases where premises are used partly for factory or workshop purposes, and partly for other purposes not those of a factory or workshop (*q*).

SCRUTTON, L.J., in dealing with the true construction of the Act of 1928, expressed the view that the proviso to sect. 3 (1) of the Act, dealing with primary purposes, was intended to cover the following state of things. "You find on a hereditament something which is a 'factory or workshop,' but you also find on the hereditament something which is not a factory or workshop—a dwelling-house, a retail shop, the offices of a distributive wholesale business, a large store. If after considering the relevant evidence, the area of the various uses of the hereditament, their respective values, and a comparison of the amount of work done under each head, you are satisfied that the primary, principal, substantial use and purpose of the hereditament is non-textile, you do not derate, for the hereditament is non-industrial. Unless you are satisfied of this you do derate, but may under sect. 4 apportion the hereditament between industrial or factory and non-industrial purposes" (*r*).

Some further help is given in another part of the judgment, in which

(*n*) R. & V. (Apportionment) Act, 1928, s. 4 (2) (c); 14 Statutes 718.

(*o*) *Ibid.*, s. 3.

(*p*) *Yates v. Burnley Rating Authority* (1933), 97 J. P. 226, at p. 232; Digest (Supp.).

(*q*) R. & V. (Apportionment) Act, 1928, s. 3 (1), proviso; 14 Statutes 715.

(*r*) *Bailey v. Potteries Electric Traction Co., Ltd.*, [1931] 1 K. B. 385, at p. 487.

2 Butterworths' Rating Appeals, 1926-1931, p. 772; Digest (Supp.). See p. 350, *post*, for decision of House of Lords.

SCRUTTON, L.J., says: "In my opinion the applicant for derating must prove his case. He must show (1) a factory or workshop on some part at least of the hereditament; (2) he need not show that the primary purpose of the hereditament is a factory purpose, but should, I think, show that the factory work done on the hereditament is so substantial considering the area, value and nature of work done and number of people employed, that it cannot be said that the primary purpose of the hereditament is non-factory. It is quite possible that factory and non-factory purposes may be nearly equally balanced, in which case it is impossible to find one primary purpose. The hereditament is then industrial, but there must be an apportionment under sect. 4 of the Act of 1928" (s).

In this case the Court of Appeal also laid down some rules for the guidance of courts of first instance, one of which is that "In determining the primary purpose, the immediate and not the ulterior purpose is to be considered": and *Twining's Case* is instanced, where premises used by Messrs. Twining for the grinding, roasting and blending of coffee were allowed as industrial, although the products were all sold outside the hereditament at their own shops (t).

Thus the primary purpose is decided by what is done on the premises themselves, and not by what is done with the goods that are produced there. The fact that the goods are produced for use by the same persons in some other department of their business, or for sale elsewhere at their own shops, does not make them non-industrial. This rule was approved by the House of Lords in *Moon (Lambeth Revenue Officer) v. L.C.C.* (u), where premises used by the L.C.C. for the printing of tickets, fare bills, notices, posters and forms for the tramway undertaking, were allowed as industrial; and in *Potteries Electric Traction Co., Ltd. v. Bailey (Stoke on Trent Revenue Officer)* (a), where premises used for the manufacture of spare parts for a fleet of omnibuses were held to be an industrial hereditament (b).

It may be noted that premises are not necessarily non-industrial because the portion of the premises found to be industrial is less in annual value and in area than the rest of the premises which are non-industrial. If it is shown that, by comparison of the volume of work and the value of it, the principal business carried on is industrial, and that the occupation of the remaining, although larger, part of the premises is subsidiary to the main purpose of the occupation, then the hereditament will be primarily industrial.

The memorandum of the M. of H. takes note of this, and states that while it is not possible to lay down any general rule the use of the word "primarily," instead of some such word as "mainly," suggests that the matter is not generally one to be determined by a precise estimation of the value attributable to parts occupied for different purposes (c). [638]

(s) At p. 482.

(t) *Stepney R.O. v. Twining & Co., Ltd.*, [1931] 1 K. B. at p. 496; 2 Butterworths' Rating Appeals, 1926-1931, p. 742.

(u) [1931] A. C. 151; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 587.

(a) [1931] A. C. 151; Digest (Supp.).

(b) The Court of Appeal had excluded the premises from relief on the ground that they were used for the maintenance of road vehicles within s. 3 (2) of the Act of 1928. The reversal by the House of Lords of this decision does not seem to disturb the passages from the judgment of the Court of Appeal quoted above.

(c) R. & V. (Apportionment) Act, 1928. Memo. R.V. (App.) M. of H., August 22, 1928, and see *Surrey R.O. v. Clarkson & Sons* (1931), English Derating Appeals,

### PURPOSES OF OCCUPATION WHICH DISENTITLE TO RELIEF

(a) **The Purposes of a Dwelling-House.**—A hereditament, occupied and used as a factory or workshop, is not an industrial hereditament if it is primarily occupied and used for the purposes of a dwelling-house (*d*). Confusion arose on the interpretation of the words, "for the purposes of." Did this mean that a factory or workshop was non-industrial if it was engaged in the manufacture of goods "for the purposes of a dwelling-house"? The Court of Appeal rejected this suggestion (*e*). SCRUTTON, L.J., pointed out that this view of the word "purposes," would practically destroy the Derating Act, for almost every factory is run for the purpose of selling either wholesale or retail, and frequently outside the hereditament in question, the goods made in the factory (*f*).

The House of Lords supported the opinion of the Court of Appeal. "The argument, in such a case," said Lord BUCKMASTER, "depends upon the assumption that, in order to ascertain what are the purposes referred to in the Act 'which are not those of a factory or workshop,' it is permissible to inquire not as to the purpose for which the premises are used, but the purpose to which the goods that they produce are to be applied. I cannot accept this contention" (*g*).

In many cases part of a dwelling-house is used as a workshop. In some, bedrooms are used, *e.g.* as tailor's workrooms, or for dress-making, or there may be a workshop in the yard. It is entirely a question of fact, in such cases, whether the hereditament is occupied primarily as a dwelling-house, or for the purposes of the workshop.

The principles on which such cases are to be decided will be found in *Finn v. Kerslake* (*h*), where premises consisting of a dwelling-house, shop and bakehouse were held to be primarily a retail shop. 【634】

(b) **The Purposes of a Retail Shop : Retail Repairs.**—A hereditament occupied and used primarily as a retail shop is not industrial (*i*). It is said in the Act, that "retail shop" includes any premises of a similar character where retail trade or business (including repair work) is carried on (*k*).

Many decisions of the courts have turned on the interpretation of this definition.

In the memorandum issued by the M. of H. before the Act of 1928 came into force (*l*), it is said that proviso (3), (1) (b), which excludes premises occupied and used as a retail shop (*m*), will presumably operate to exclude premises which are primarily occupied as *e.g.* a shop or wayside garage, even though part of the premises may itself

Vol. II., p. 53, at p. 61 ("mere proof of floor space does not determine the primary purpose"), and *Cardiff R.O. v. Cardiff Assessment Committee and Western Mail, Ltd.*, [1931] 1 K. B. 47; Digest (Supp.) (primary purpose of newspaper office and printing works).

(*d*) *R. & V. (Apportionment) Act, 1928, s. 3 (1) (a); 14 Statutes 715.*

(*e*) *Bailey v. Potteries Electric Traction Co., Ltd.*, [1931] 1 K. B. 385, at p. 487.

(*f*) *Ibid.*, at p. 485.

(*g*) *Moon v. L.C.C.*, [1931] A. C. 151, at pp. 158, 159; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 573; and see *ante*, p. 350.

(*h*) [1931] A. C. 457; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 915.

(*i*) *R. & V. (Apportionment) Act, 1928, s. 3 (1) (b); 14 Statutes 716.*

(*k*) *Ibid.*, s. 3 (4).

(*l*) Memo. R.V. (App.), August 22, 1928.

(*m*) *R. & V. (Apportionment) Act, 1928, s. 3 (1) (b); 14 Statutes 716.*

constitute a "factory" or "workshop." In view of the definition of the expression "retail shop" it would seem that the ordinary garage, which, though not generally called a shop, is used primarily for the retail selling of oils and motor accessories and for the execution of minor repairs, will be excluded; but premises not being of a "similar character" to a retail shop (*e.g.* the repair works of a motor manufacturing firm) will not be excluded even though they may be devoted mainly or even exclusively to repair work.

Subsequent decisions of the courts have confirmed this view of the Ministry.

In *Turpin v. Middlesbrough Assessment Committee*, and *Kaye v. Eyre Bros., Ltd.*, heard together (*n*), the House of Lords held, reversing the decisions of the lower courts, that premises occupied and used for the repair and storage of motor cars and also for the sale of petrol and small motor accessories, but at which the greater part of the business was that of repair, fell within sect. 3 (1) as being used for the purposes of a retail shop.

In *Turpin v. Middlesbrough* (*o*), Lord DUNEDIN observed that upon the facts found the hereditament in question was occupied and used for the purposes of repair work done to cars and other objects brought or sent there by the owners, without the intervention of any middleman. He did not agree that the only repair work which is covered by the definition is repair work incidental to retail selling.

In *Kaye v. Eyre Bros., Ltd.*, "retail repair work" was held to be "repair work done to the order of the owner of the object which is repaired and without the intervention of any middleman (*p*)."<sup>1</sup> To lose the benefits of derating, therefore, premises must be occupied primarily as a place to which people can resort to have their wants supplied or services rendered. Premises are not disqualified because they are used for retail trade or business. They are only disqualified if the primary, the principal, business is retail, and people can resort to the premises to have their wants supplied or services rendered. This rule was applied in *Toogood & Sons, Ltd. v. Green* (*q*). The premises were used for the purposes of seed merchants. Most of the business was with retail customers. Orders for the seed were received at the offices, and the seed was dispatched directly to the customers. Only a small part of the business was done with people who resorted to the premises to buy. There was no accommodation adapted for the purpose of the physical resort of customers. There was a retail business, but the sale to customers resorting to the premises was not the primary purpose of the occupation, and the premises were allowed as industrial.

The first test, as laid down in *Moon v. L.C.C.* (*r*) is as to what is done on the hereditament in question, irrespective of what is done outside the hereditament. Secondly, the test is not whether the hereditament is mainly occupied and used for the purposes of "a retail business," but whether it is mainly occupied and used for the purposes of "a retail shop" (*s*).

(*n*) [1931] A. C. 451; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926–1931, p. 905.

(*o*) At pp. 473, 474 of [1931] A. C.

(*p*) *Supra*. And see *British Electrical Repairs, Ltd. v. Assessor for Glasgow. Land Valuation Appeal Case (Edinburgh)*, January, 1933; but see also *Daimler Co., Ltd. v. Leeds Rating Authority* (1933), Derating Appeals, Vol. IV., 73.

(*q*) [1932] A. C. 663; Digest (Supp.).

(*r*) [1931] A. C. 151; Digest (Supp.).

(*s*) *Toogood & Sons, Ltd. v. Green*, *supra*, per Lord THANKERTON, at pp. 671, 672.

In *Finn v. Kerslake* (*t*) the House of Lords held that a baker's shop with living rooms over it and a bakehouse in the rear, was primarily a retail shop. To determine the primary purpose, the occupation and use of the hereditament as a whole must be looked at, and to determine the primary purpose the dissection of a unified business such as was there carried on is not justified. The sale of bread and confectionery to hotels, clubs, restaurants, etc., is typical retail trade, and these sales, as also the orders given to roundsmen, are just part of the ordinary business of a retail shop. The bakehouse was ancillary to the trade or business carried on in the shop.

Following on this decision premises of bespoke tailors have been held to be retail shops.

In *Staincross R.O. v. Staincross Assessment Committee* (*u*), a tailor's room on the first floor, over a confectioner's shop, was held to be a retail shop. No goods were displayed for sale or advertisement. The clothes made on the premises were the only articles sold there. Some customers called to give their orders and purchase the clothes made. No clothes were sold wholesale.

In another case (*a*), it was a finding of fact that the hereditament was occupied and used partly as a retail shop, but mainly as a workshop. There was, however, a unified business, viz. taking orders for bespoke tailoring and making the things so bespoken. These could not be dissected, and the workshop must be treated as ancillary to the trade or business.

It has now been laid down that, where a hereditament consists of a factory and a retail shop, and the product of the factory is disposed of through the retail shop, the hereditament is occupied and used for the purpose of the retail shop (*b*). [635]

(c) **The Purposes of Distributive Wholesale Business.**—Such premises are excluded by sect. 3 (1) (c) of the Act of 1928 (*c*), and decisions of the courts indicate that premises used primarily for the purposes either of a distributive wholesale or distributive retail business are excluded. Unless the goods distributed are put through some manufacturing process there, the premises do not come within the Act of 1928.

If, on the other hand, the premises are primarily used for the finishing or adapting for sale of goods, or for any other of the purposes of a factory or workshop, they will be industrial, and the ultimate destination of the goods when they are dispatched will not affect the position.

It is the use to which premises are put that must be considered, and not what may be ultimately done with whatever commodity they create (*d*).

The principles to be applied in determining whether a business is distributive, so as to be excluded from the Act, are to be found in cases decided by the House of Lords.

(*t*) [1931] A. C. 457; Digest (Supp.).

(*u*) (1930), 143 L. T. 525; Digest (Supp.).

(*a*) *Wilkinson v. Sibley and Donovan*, [1932] 1 K. B. 194, C. A.; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 926.

(*b*) *Ibid.*, per SLESSER, L.J., at p. 203.

(*c*) 14 Statutes 716.

(*d*) *Potteries Electric Traction Co., Ltd. v. Bailey*, [1931] A. C. 151, *per* Lord BUCKMASTER, at p. 158; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 576.

In *Sedgwick v. Watney, Combe, Reid & Co., Ltd.* (e), premises used for beer bottling were held not to be a store or a distributive business but an industrial hereditament. The finished article that was being prepared for distribution was bottled beer. The beer did not enter the premises as bottled beer. It underwent treatment, a treatment which changed its quality and made it from an unpotable and unmarketable article into a potable and marketable one (f).

In *Kaye v. Burrows and Hines v. Eastern Counties Farmers' Co-operative Association, Ltd.* (g), which were discussed together, the House of Lords held, in the first case, that rag sorting works, and in the second that premises used for treating and preparing seeds for sale were industrial and not distributive.

The crucial question was whether they were primarily distributive businesses or was there an adapting for sale. The test was the same as it was in the bottled beer case (h). The finished article to be turned out was to be looked at. If that finished article was only put into the condition of a finished article by the processes to which it had been subjected in the hereditament, then the processes were an "altering or adapting for sale." In both cases of the rags and the seeds the finished article was different from the article in bulk which entered the hereditament, and that was an adaptation for sale (i).

Premises therefore are only excluded as being used for the purpose of distributive wholesale business where the goods distributed are distributed substantially as they are received. As stated in the beer bottling case (k), in one sense any wholesale business is distributive, because no goods remain for ever in a factory. They leave the factory in order to be distributed. It was easy to conceive premises used primarily for the process of distribution. There was no doubt that, in the case of premises, for example, where nothing was done except the mere bottling of a liquid, such premises might be said to be of that character. The point is whether the treatment which the goods undergo on the premises is a mere prelude to distribution (l). [636]

(d) **Purposes of Storage.**—The storage referred to in sect. 3 (1) (d) of the Act of 1928 (m), means storage as a purpose and end in itself. Storage such as is merely a necessary and transitory incident of the manufacturing process carried on in premises does not fall within the definition and is not excluded from the benefits of derating (n). Storage

(e) [1931] A. C. 447 ; Digest (Supp.) ; 2 Butterworths' Rating Appeals, 1926-1931, p. 889.

(f) *Per Lord DUNEDIN*, at p. 463.

(g) [1931] A. C. 454, 456 ; Digest (Supp.) ; 2 Butterworths' Rating Appeals, 1926-1931, p. 907.

(h) *Supra*.

(i) *Lord DUNEDIN*, at p. 484. See also *Weatherhead (Bradford Revenue Officer) v. Laycock, Son & Co., Ltd.* (wool sorting), [1931] 1 K. B. 385 ; Digest (Supp.) ; *Lofthouse (Langbaugh Revenue Officer) v. Langbaugh Assessment Committee and A. Bainbridge, Ltd.* (scrap metal works), [1931] 1 K. B. 386 ; Digest (Supp.) ; *Carmarthen R.O. v. United Dairies (Wholesale), Ltd.* (dairy ; milk bottling depot ; pasteurising) (1931), 47 T. L. R. 233 ; Digest (Supp.).

(k) *Supra*.

(l) *Sedgwick v. Camberwell Assessment Committee and Watney, Combe, Reid & Co., Ltd.*, [1931] A. C. 447 ; Digest (Supp.).

(m) 14 Statutes 716.

(n) *Hines v. Eastern Counties Farmers' Co-operative Association, Ltd.*, [1931] A. C. 456, *per Lord DUNEDIN*, at p. 485 ; Digest (Supp.) ; 2 Butterworths' Rating Appeals, 1926-1931, p. 910. See also Memo. R.V. (App.) of M. of H., August 22, 1928, *supra*.

space for raw materials and finished articles awaiting dispatch is required in any manufacturing business, and the proviso does not exclude such storage from the category of industrial hereditaments.

It is clear, therefore, that two kinds of storage are contemplated by the Act, of which one is to be allowed as industrial, and the other excluded as non-industrial. Warehousing or storage as a purpose and end in itself is non-industrial. Storage of raw material to be worked up on the premises, and of spare plant and equipment, or of goods manufactured on the premises and awaiting dispatch, is industrial.

In deciding whether premises used for storage not ancillary to manufacture on the premises are industrial or not, the same considerations apply as in the cases of the seed warehouse, scrap metal works, rag sorting and beer bottling (*o*). If the goods have been subjected on the premises to some process of finishing or adapting for sale; if the finished article is different from the article which entered the hereditament, the premises would fall to be considered as industrial hereditaments. Thus oil blending works were held to be industrial. It was contended that they were either a distributive wholesale business or for storage. But the crude oils were treated and blended, so as to form something essentially different from the raw materials which entered into their composition (*p*).

It is to be noted that only storage of material to be worked up *on the premises*, or of goods manufactured *on the premises*, may be reckoned as industrial. If, therefore, such material or plant or goods are stored in premises which do not form part of the factory or workshop, then the place in which they are stored will have to be considered as a separate hereditament, primarily used for storage, and not entitled to relief.

Cold storage is not industrial. Premises in which, by the use of elaborate machinery, meat and other produce was chilled or maintained in a frozen state, and when required, defrosted for sale, were held by the House of Lords to be primarily occupied for the purpose of storage, and that the processes to which the goods were subjected were incidental to storage, and to render storage possible, and not otherwise (*q*). [637]

(e) **Purposes of a Public Supply Undertaking.**—The definition of the expression "public supply undertaking" in sect. 3 (4) of the Act, has already been set out (*r*).

The exclusion of these undertakings is in keeping with the exclusion from sect. 24 of the R. & V.A., 1925 (*s*), of hereditaments, the value of which is ascertained by reference to accounts, receipts, or profits, which are not allowed the benefit of derating machinery therein. The reason for this exclusion is that the purpose of the derating of industrial hereditaments was to afford relief to industry.

The general effect of the definition is that the undertakings indicated, which supply gas, water, etc., to the public or statutory undertakings,

(*o*) *Ante*, p. 354, note (*i*).

(*p*) *Poplar R.O. v. Poplar Assessment Committee and Liberty Oils, Ltd.* (1930), 99 L. J. (K. B.) 510; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 502.

(*q*) *Union Cold Storage Co., Ltd. v. Bancroft*, [1931] A. C. 459; Digest (Supp.); and see *Union Cold Storage Co., Ltd. v. Moon*, [1932] 2 K. B. 648 (cold storage of goods not in course of being transported); Digest (Supp.).

(*r*) See *ante*, p. 348.

(*s*) 14 Statutes 650.

do not come under the expression "industrial hereditaments," but similar undertakings erected by private persons for their advantage are not excluded.

Thus premises for the supply of gas, water, or electricity to a railway or municipal tramway undertaking are not industrial. Premises for the supply of the same services, which form part of an industrial concern, will rank with the factory or workshop which they supply as industrial. [688]

(f) **Any other Purposes not those of a Factory or Workshop.**—Whether the purposes are similar to the foregoing purposes (a) to (e) or not, if the purposes are not those of a factory or workshop, the premises so occupied and used are not industrial (*t*).

In effect this proviso would serve to exclude all such premises as retail shops, stores, and the others specifically named, but it also provides for the exclusion of any uses, under whatever classification they may come, which are not the purposes of a factory or workshop.

Cable testing works, under this heading, were held by the House of Lords to be non-industrial (*u*). The case is of considerable interest as deciding not only whether "testing" is a factory purpose or not, but as referring to the broader issue of what constitutes a factory or workshop (*a*).

Links were forged in the works to join up the chains which had been severed for testing purposes, and this gave the works the character of a factory. But it was not an industrial hereditament because it was used primarily for the purposes of testing, which in the opinion of the House of Lords was not a factory purpose.

Under this proviso would be excluded, also, e.g. a joiner's shop or laundry or bakehouse, in a public institution or an hotel. In such instances the workshop obviously would not be the primary purpose of the occupation of the premises, nor would the bakery to a café (*b*), or the saw mill in a timber merchant's yard (*c*). The receiving depots of dyers and cleaners are also non-industrial (*d*). [689]

(g) **Purposes of Housing or Maintenance of Road Vehicles.**—Any place used by the occupier for the housing or maintenance of his road vehicles or as stables is not part of the factory or workshop (*e*). A place used for the maintenance is to be distinguished from a place for the manufacture of spare parts used in the maintenance of road vehicles. The fact that spare parts are necessary for repairs does not make their manufacture of itself an act of maintenance. It is the purpose to which premises are put which is the deciding factor, and not the purpose to which the products of the premises are devoted (*f*).

(*t*) R. & V. (Apportionment) Act, 1928, s. 3 (1) (f); 14 Statutes 716.

(*u*) *Grove v. Lloyd's British Testing House Co., Ltd.*, [1931] A. C. 450; Digest (Supp.); *2 Butterworths' Rating Appeals*, 1926-1931, p. 894.

(*a*) See sub-heading "Factories and Workshops," *post*, p. 357.

(*b*) Cf. *Leeds R.O. v. J. Lyons & Co., Ltd.* (1931) (K. B. D.); English Derating Appeals, Vol. II., p. 145.

(*c*) Cf. *Surrey R.O. v. Gridley, Miskin & Co., Ltd.* (1931) (K. B. D.); English Derating Appeals, Vol. II., p. 236.

(*d*) *Ideal Cleaners and Dyers, Ltd. v. West Middlesex R.O. and Assessment Committee* (1930), 143 L. T. 483, D. C.; Digest (Supp.).

(*e*) R. & V. (Apportionment) Act, 1928, s. 3 (2); 14 Statutes 716.

(*f*) *Potteries Electric Traction Co., Ltd. v. Bailey*, [1931] A. C. 151; Digest (Supp.); *Moon v. L.C.C.*, [1931] A. C. 151; Digest (Supp.); *Hall & Co., Ltd. v. Surrey S.E. Assessment Committee* (1933) (K. B. D.); Derating Appeals, Vol. IV., 29 (overhauling not maintenance).

A factory for the manufacture of spare parts, or any other article, will not of course be entitled to relief if it forms part only of a single hereditament the primary purpose of which is non-factory. [640]

#### PROPERTIES CONTIGUOUS

If properties in the same occupation, though separately assessed for some special reason, are contiguous to one another and are used as parts of a single factory or workshop, then they are to be treated as if they were assessed as one workshop (h). The word "contiguous" here means "touching" (i), and does not mean "neighbouring" or "in proximity to."

It would appear that the term "property" includes the land comprised in the property, and that if premises are on land which adjoins—that is, which is contiguous to—land on which are other premises in the same occupation, then the premises on plots of land which adjoin must be considered as one, if in fact they are used as part of one factory or workshop. The Divisional Court accepted this principle in one case, where the space intervening between the two properties was a public thoroughfare; upon the doctrine that the boundaries of properties on opposite sides of a thoroughfare extend *ad medium filum vice* (k).

The court would not allow, however, that a garage or stable so separated from the factory, should be regarded as part of the factory (l). Only such properties as are used as part of a single factory can be aggregated, and by sect. 3 (2) of the Act garages and stables are not to be deemed to be part of a factory.

If the garages or stables used by the occupier of an industrial hereditament are assessed with the hereditament as one rateable hereditament, there appears to be no reason why they should not have the benefit of the 10 per cent. under sect. 4 (2)(b) of the Act of 1928 (m). As regards this they do not differ from a showroom or the general offices in a factory. These also do not form part of the factory, but on an apportionment the non-industrial part is only to be treated as non-industrial in so far as it exceeds 10 per cent. of the value of the industrial part.

If the garages and stables are assessed separately, they do not get this benefit, as they cannot be aggregated with the factory, and treated as one (n). AVORY, J., said (i) that some special reason for the separate assessments must appear before a case can be brought within the sub-section. The section itself simply refers to two such special circumstances, viz. situation in different parishes and valuation at different times. [641]

#### FACTORIES AND WORKSHOPS

The factories and workshops to be derated are those so defined in the Factory and Workshop Acts, 1901 to 1920 (o), but many difficulties have arisen in the application of the definitions in those Acts for the purposes of derating.

Unless the premises are of a kind described in the Sixth Schedule

(g) R. & V. (Apportionment) Act, 1928, s. 3 (1) (f); 14 Statutes 716.

(h) *Ibid.*, s. 3 (3).

(i) *Spillers, Ltd. v. Cardiff Assessment Committee*, [1931] 2 K. B. 21, at p. 47; Digest (Supp.); 2 Butterworths' Rating Appeals, 1926-1931, p. 818.

(k) *West Derby R.O. v. Tate and Lyle, Ltd.*, [1931] 2 K. B. 21, at p. 44; Digest (Supp.).

(l) *Ibid.*, pp. 45, 46.

(n) *West Derby R.O. v. Tate and Lyle, Ltd.*, *supra*.

(m) 14 Statutes 718.

(o) See *ante*, pp. 345, 346.

to the Factory and Workshop Act, 1901, the labour must be exercised by way of trade or for purposes of gain, in both a factory and a workshop (*p*). In the cases prior to 1928, these words had been interpreted as meaning that if the products manufactured are not put upon the market for the purpose of direct gain, but are only used by the occupier of the factory or workshop in connection with and as ancillary to some other undertaking or business which he is carrying on elsewhere, the factory or workshop is then occupied and used for a purpose which is not that of a factory or workshop.

Thus in *Nash v. Hollinshead* (*q*) it had been held that a steam engine worked on a farm for grinding meal to feed the farm stock was not a factory, and in one of the earlier derating cases this was accepted as showing that processes are not carried on for purposes of gain, unless a manufactured article is manufactured for the purpose of direct gain as distinguished from indirect gain (*r*). So also in *Curtis v. Skinner* (*s*) the repairing of nets by the servants of a fisherman for use in his own business was held not to be carried on by way of trade or for purposes of gain so as to make the place where the nets were repaired a "workshop."

Under the derating Acts, this interpretation of the meaning of the words "by way of trade or for purposes of gain" was overruled by the Court of Appeal and the House of Lords. SCRUTTON, L.J., could not think that where there was manufacturing of articles to be employed in carrying on a trade, though that trade is one of supplying services for reward, and not for supplying goods, the manufacture is not for purposes of trade, or that *Nash v. Hollinshead*, *supra*, required the courts to hold otherwise. If there was a trade there was no need to consider "gain," and in his opinion *Curtis v. Skinner*, *supra*, was wrongly decided (*t*).

The opinion of the House of Lords was indicated in the words of Lord BUCKMASTER:—"Can you, for the purpose of determining whether a hereditament is primarily occupied and used for purposes which are not those of a factory or workshop, consider not only the actual indisputable use of the premises themselves, but the use that is going to be made of the work done on the premises? I am clearly of opinion," he said, "that this cannot be done" (*u*). Premises used by a tramway undertaking for the printing of tickets were therefore allowed to be industrial (*a*), and so were premises for the manufacture of spare parts for a fleet of omnibuses (*b*). Likewise the repair yard of a lighterage company used for the building and repairing of their own barges (*c*).  
[642]

**Altering, Repairing, Ornamenting, or Finishing ; Adapting for Sale of any Article.**—Premises in which any of these processes is carried on are *prima facie* a factory or workshop (*d*). Many cases have come

(*p*) Factory and Workshop Act, 1901, s. 149 (1); 8 Statutes 593.

(*q*) [1901] 1 K. B. 700; 24 Digest 901, 29.

(*r*) *Bailey v. Potteries Electric Traction Co., Ltd.*, [1931] 1 K. B. 385, at pp. 488, 491, 492; Digest (Supp.).

(*s*) (1906), 70 J. P. 272; 95 L. T. 31; 24 Digest 903, 40.

(*t*) *Bailey v. Potteries Electric Traction Co., Ltd.*, *supra*, at pp. 491, 492; Digest (Supp.).

(*u*) *Moon v. L.C.C.*, [1931] A. C. 151, at pp. 161, 162; Digest (Supp.).

(*a*) *Moon v. L.C.C.*, *supra*.

(*b*) *Potteries Electric Traction Co., Ltd. v. Bailey*, [1931] A. C. 151; Digest (Supp.).

(*c*) *Barton v. Union Lighterage Co., Ltd.*, [1931] 1 K. B. 385, 499; Digest (Supp.).

(*d*) Factory and Workshop Act, 1901, s. 149 (1); 8 Statutes 593.

before the courts as to the meaning of these words. In most of them it was contended that the process to which the articles were subjected was so slight, that the primary purpose of the occupation and use of the premises was that e.g. of storage, or of a distributive wholesale business. Of such premises, the following have been allowed as industrial :

**Beer Bottling.**—The process was not the bottling of beer only, but the making of bottled beer. The beer was changed by a treatment which changed it from an unpotable and unmarketable article into a potable and marketable one (e). [643]

**Blending of Butter.**—The blending of butter was a factory or workshop purpose, and the case could not be distinguished from that of beer bottling (*supra*) (f). [644]

**Coffee Grinding, Roasting and Blending.**—Allowed as a manufacturing process, and the premises were not used for the purposes of a distributive wholesale business (g). [645]

**Oil Blending.**—The oils were clarified, blended, and filtered (h). [646]

**Rag Sorting.**—The premises were used for the sorting, ripping, clipping, grading and classification of all kinds of rags, and the removal of dirt (i). [647]

**Seed Cleaning.**—The seed entered the premises in a rough, unclean, and impure state, and was adapted for sale by treatment (k). [648]

**Whisky Blending.**—On the ground that the case was governed by the decision of the House of Lords in the beer bottling case (*supra*). The test to be applied is whether or not the finished article is put into the condition of a finished article by processes to which it has been subjected on the premises (l). [649]

**Wool Sorting.**—There was sorting and blending of fleeces for the purpose of making "matchings," a different article from the fleeces out of which "matchings" are made (m). [650]

**Pasteurising Milk.**—A firm of wholesale dairymen used premises for pasteurising and cleaning milk, and making cheese. The milk was then sent to the company's own depots for sale. It was held not to be a distributive wholesale business (n). [651]

(e) *Sedgwick v. Camberwell Assessment Committee and Watney, Combe, Reid & Co., Ltd.*, [1931] A. C. 447; Digest (Supp.).

(f) *Aptin and Barrett, Ltd. v. Battersea R.O.* (1931) (K. B. D.); English Derating Appeals, Vol. II., p. 259; Digest (Supp.).

(g) *Stepney R.O. v. Twinings & Co., Ltd.*, [1931] 1 K. B. 385; Digest (Supp.).

(h) *Poplar R.O. v. Poplar Assessment Committee and Liberty Oils, Ltd.* (1930), 90 L. J. (K. B.) 510; Digest (Supp.).

(i) *Kaye v. Burrows and Others*, [1931] A. C. 454; Digest (Supp.).

(k) *Hines (Ipswich R.O.) v. Eastern Counties Farmers' Co-operative Association, Ltd.*, [1931] A. C. 456; Digest (Supp.); *Pritchard v. Lewis & Sons*, [1931] 1 K. B. 386; Digest (Supp.); *Toogood & Sons, Ltd. v. Green*, [1932] A. C. 663; Digest (Supp.).

(l) *Stepney R.O. v. Walker & Sons, Ltd.* (1931) (K. B. D.); English Derating Appeals, Vol. II., 274.

(m) *Weathered v. Laycock, Son & Co., Ltd.*, [1931] 1 K. B. 386; Digest (Supp.).

(n) *Carmarthen R.O. v. United Dairies (Wholesale), Ltd.* (1931), 47 T. L. R. 233; Digest (Supp.); *Bristol Co-operative Society, Ltd. v. Bristol R.O.* (1932) (K. B. D.); English Derating Appeals, Vol. III., 75 (held to be a retail shop); *Birkenhead R.O. v. Birkenhead and District Co-operative Society, Ltd.* (1934) (K. B. D.); Rating and Income Tax, Vol. XX., p. 53 (allowed as industrial—distinguishing *Bristol Co-operative Society, Ltd. Case, supra*).

**Tea Blending.**—More than mere blending was done. Processes of sifting, cutting, milling, and packing were employed to make the raw tea suitable for sale (o). [652]

**Scrap Metal Works.**—The premises were used primarily for the purpose of adapting scrap metal for sale. It was broken up and adapted for use in furnace boxes and crucibles (p).

In each of the cases cited, it may be said that there was an adapting for sale. That is, something was done to the article in question which in some way changed it (q). [653]

#### FREIGHT-TRANSPORT HEREDITAMENTA

Relief from rates on freight-transport hereditaments is conferred by sect. 68 of the L.G.A., 1929 (r). The hereditaments defined as freight-transport hereditaments are those occupied and used wholly or partly :

- (1) for railway transport purposes as part of a railway undertaking, or light railway undertaking, by a railway or light railway company ;
- (2) for canal transport purposes as part of a canal undertaking ;
- (3) for dock purposes as part of a dock undertaking (s).

In each case it is emphasised that the hereditament must be occupied and used as part of an undertaking, and where the inclusion of any premises as a freight-transport hereditament is in question, this test must be applied.

A railway undertaking, to come within the definition, must be one carried on by a railway company for which a schedule of standard charges has been settled under the Railways Act, 1921 (t), or to which such a schedule is for the time being applied under sect. 33 of that Act (u); and the railway must be used for the conveyance of merchandise otherwise than by passenger train or carriage.

A light railway or a light railway company is included, if it is used as a public railway for the conveyance of merchandise other than by passenger train or carriage (a). The railways for which a schedule of standard charges has been settled under the Railways Act, 1921 (*supra*), are the four companies existing after amalgamation, namely, the Southern; Great Western; London, Midland and Scottish; and London and North-Eastern Railway Companies (b). Those to which the schedule is applied are set out in the orders of the Railway Rates Tribunal (c).

A canal undertaking is one where the canal is used for the conveyance of merchandise, and a dock must form part of a dock undertaking of which a substantial proportion of the volume of business is concerned

(o) *Lipton, Ltd. v. Burton*, [1932] 1 K. B. 204; Digest (Supp.).

(p) *Pickin v. Langbaugh Assessment Committee* and *Lofthouse v. Langbaugh Assessment Committee*, [1931] 1 K. B. 385, 426, 433; Digest (Supp.).

(q) Cf. *Grove v. Lloyds British Testing House Co., Ltd.*, [1931] A. C. 450; Digest (Supp.), *per Lord DUNEDIN*.

(r) 10 Statutes 928.

(s) R. & V. (Apportionment) Act, 1928, s. 5 (1); 14 Statutes 719.

(t) 14 Statutes 316.

(u) *Ibid.*, 339.

(a) R. & V. (Apportionment) Act, 1928, s. 5 (1) (a); 14 Statutes 719.

(b) S. 30; 14 Statutes 338.

(c) See S.R. & O., 1927, Nos. 1211—1217.

with the shipping and unshipping of merchandise not belonging to or intended for the use of the undertakers (d). A tramroad is a light railway, if it is authorised by a special Act, but not if it is laid wholly or mainly along a public carriageway, or is used mainly for the carriage of passengers (e).

A light railway company need not necessarily be incorporated. It is sufficient if a person or company are authorised to construct or are owners or lessees of a light railway authorised by or under an Act, or are working it under any working agreement (e).

*Railway transport purposes* are any purposes connected with the conveyance or transport by railway of passengers and their luggage, or of carriages or parcels or merchandise. They also include any purposes in connection with the construction, maintenance and repair of the ways, works, machinery, and plant used in connection with the undertaking (f). [654]

*Canal transport purposes* mean all the purposes indicated in the preceding paragraph in relation to conveyance or transport by canal, with the addition that a railway forming part of a canal undertaking falls within the definition (g). [655]

*Dock purposes* also include the purposes defined as railway transport purposes in relation to shipping or unshipping at a dock, with, in addition, a railway forming part of the dock undertaking. Any purposes connected with the provision of accommodation for vessels and their stores, equipment and tackle (including fishing tackle) whether for purposes of repair or otherwise are also added (h). [656]

*A canal undertaking* is not confined to the working of a canal, but includes any inland navigation, which is part of an undertaking for the conveyance of merchandise (i). A river made navigable may therefore be a canal undertaking, and, as there are no limiting words, it will suffice if *some* merchandise is carried, although the undertaking may be carried on primarily for other purposes (k).

A dock authority, like a light railway company, need not be incorporated (i). The dock undertaking includes also any other undertaking part of which is a dock, but only in so far as its business is carried on at the dock and in connection with it (i). The term "dock" includes a harbour, wharf, pier, jetty, or other works where vessels can ship or unship merchandise or passengers. But it does not include a pier or jetty primarily used for recreation (i).

"Merchandise" here has the same meaning as in sect. 57 of the Railways Act, 1921 (l), that is to say, the term includes goods, minerals, livestock, and animals of all descriptions. "Vessel" includes any ship or boat, or any other description of vessel used in navigation (m). [657]

(d) R. & V. (Apportionment) Act, 1928, s. 5 (1) (b), (c); 14 Statutes 719. See also *Leeds R.O. v. Leeds Second Co-operative Society, Ltd.* (1931), English Derating Appeals, Vol. II., 114.

(e) *Ibid.*, s. 5 (3); 14 Statutes 720.

(f) *Ibid.*, s. 5 (2) (a).

(g) *Ibid.*, s. 5 (2) (b). As to "repairs," see *Barton v. Union Lighterage Co., Ltd.*, [1931] 1 K. B. 385; Digest (Supp.).

(h) *Ibid.*, s. 5 (2) (c).

(i) *Ibid.*, s. 5 (3).

(k) For "inland navigation," see *Humber Conservancy Board v. Bater*, [1914] 3 K. B. 449. As to a "repair yard and riverside wharf," see *Barton v. Union Lighterage Co., Ltd.*, *supra*.

(l) 14 Statutes 355.

(m) R. & V. (Apportionment) Act, 1928, s. 5 (3); 14 Statutes 720.

**Premises Excluded.**—The offices of a railway, canal or dock undertaking do not form part of a freight-transport hereditament (*n*). They are only excluded, however, where the primary occupation and use of the hereditament is for the purposes of the general direction and management, or for purposes ancillary thereto. Where such offices, therefore, are included in the assessment of a larger hereditament, as e.g. a railway station, of which the primary purpose is freight-transport, the exclusion in the proviso will not apply. For purposes of apportionment, a dwelling-house, hotel, or place of public refreshment is not to be reckoned as part of a freight-transport hereditament (*o*), nor is any part of a freight-transport hereditament so let out as to be capable of separate assessment (*p*), unless it is actually occupied and used as part of the undertaking (*q*). No part of a canal or dock undertaking, whether it be a building, yard, or other place which is primarily occupied and used for warehousing merchandise, not in the course of being transported, is to be included as being occupied and used for transport purposes (*r*). [658]

**Entries in Valuation Lists.**—Freight-transport hereditaments are to be shown separately in the valuation list (*s*). If used wholly for transport purposes, they are to be so shown. If used partly for transport purposes and partly for other purposes, the net annual value is to be shown as apportioned between the two purposes (*t*).

If the hereditament is used only for one transport purpose, the nature of the purpose is to be shown. If used for more than one transport purpose, as e.g. partly for railway and partly for dock purposes, there is to be an apportionment of value to each of the transport purposes (*t*).

A part of a freight-transport hereditament so let out as to be capable of separate assessment is not to be entered as part of the undertaking, and a building or yard or any other place, used primarily for warehousing merchandise, not in the course of being transported, as part of a canal or dock undertaking is also to be excluded (*u*). A dwelling-house, hotel, or a place of public refreshment does not form part of a freight-transport hereditament (*a*).

No new cases of industrial or freight-transport hereditaments may now be entered in the derated parts of the valuation list, except upon claim to the rating authority by the owner or occupier in the prescribed form, though a proposal for the removal of a derated hereditament from that part of the list may be made by anyone entitled to make a proposal under sect. 37 of the R. & V.A., 1925 ; 14 Statutes 719 (*b*). [659]

(*n*) R. & V. (Apportionment) Act, 1928, s. 5 (1), proviso ; 14 Statutes 719.

(*o*) *Ibid.*, s. 6 (3) ; 14 Statutes 722. See also *Lee Conservancy Board v. R.* (lock-keeper's cottages) (1931), 39 Lloyd's L. R. 47 ; Digest (Supp.).

(*p*) See title ASSESSMENTS FOR RATES, sub-title "Exclusive Occupation," Vol. I., p. 460.

(*q*) R. & V. (Apportionment) Act, 1928, s. 6 (3) (a) ; 14 Statutes 722.

(*r*) *Ibid.*, s. 6 (3) (b) ; 14 Statutes 722. See *Bottomley v. West Derby Assessment Committee*, [1932] 1 K. B. 40 ; Digest (Supp.), and *Union Cold Storage Co., Ltd. v. Moon*, [1932] 2 K. B. 648 (cold storage of goods not being transported) ; Digest (Supp.).

(*s*) R. & V. (Apportionment) Act, 1928, s. 1 ; 14 Statutes 713.

(*t*) *Ibid.*, s. 6 (2).

(*u*) See cases mentioned *supra*, in note (*r*).

(*a*) R. & V. (Apportionment) Act, 1928, s. 6 ; 14 Statutes 721.

(*b*) L.G.A., 1929, s. 70 (4) ; 10 Statutes 920 ; and see R. & V.A. (Form of Valuation List) Rules, 1932 (S.R. & O., 1932, No. 395), and Circular 1278, 1932. For amendment of valuation list, see L.G.A., 1929, s. 70 ; 10 Statutes 929. For forms of proposal and claim, see S.R. & O., 1932, No. 282. For s. 37 of R. & V.A., 1925, see 14 Statutes 664.

**Relief Granted.**—Derating is granted by sects. 67, 68 of the L.G.A., 1929 (c). Agricultural land and buildings are exempted from payment of all rates, and are now no longer to be entered in the rate book or the valuation list. This relief does not include farm-houses and cottages, but their method of assessment is regulated by sect. 72 of the Act of 1929 (d).

Industrial hereditaments and freight-transport hereditaments are partially derated. In future where the hereditament is wholly industrial, or freight-transport, rates are to be charged on one-quarter only of the net annual value (e). If partly for industrial or transport purposes, and partly for other purposes, rates are to be charged on one-quarter of the net annual value of the part for industrial or transport purposes, and in full on the value of the part used for other purposes. But where the net annual value and the rateable value under R. & V.A., 1925, would not have been the same, and a deduction would have been made from the net annual value in arriving at the rateable value if it had continued to be so ascertained under sect. 22 (1) (c) of that Act, or under any scheme made under sect. 64 of that Act, by reason of any privilege, the net amount arrived at after such deduction, becomes the net annual value for the purpose of derating, and rates may be charged on one-fourth only of such amount (f).

The relief granted on agricultural land and buildings, and on industrial hereditaments accrues to the benefit of the occupier, but the relief to freight-transport hereditaments is to be passed on to the users of the undertaking by means of rebates or reductions in charges for transport purposes (g).

Where any rates in respect of an industrial hereditament are payable by the landlord, then if the contract to do so was made before October 1, 1929, the landlord must either pay or allow the tenant the amount by which the rates are reduced by derating (h). If part of an industrial hereditament is let out to a tenant, who has undertaken to pay a rent inclusive of the rates, the tenant will be similarly entitled to the relief in the rates, although the part may not be separately assessed. The rating authority are to certify the amount payable by the landlord to the tenant, on application by either of them (h). This provision, however, does not entitle an occupier who sublets to recover the rates he allows to his sub-tenant from his own landlord (i). [660]

#### LONDON

The law with respect to derating as stated above applies to London with certain modifications. The R. & V.A., 1925, does not in general apply to London, rating in which is governed by the Valuation (Metropolis) Act, 1869, and its amendments (k), but by the R. & V.A., 1928 (l), the provisions of sect. 24 of the 1925 Act as to machinery have the same effect for the purposes of making or revising valuation lists under the Valuation (Metropolis) Act, 1869, as for making and revising valuation lists under the 1925 Act.

The R. & V. (Apportionment) Act, 1928 (m), applies to London, subject to certain amendments of the Valuation (Metropolis) Act, 1869,

(c) 10 Statutes 927, 928.

(d) 10 Statutes 931.

(e) L.G.A., 1929, s. 68 (1) (a); 10 Statutes 928.

(f) *Ibid.*, s. 68 (1), proviso; *ibid.*

(g) *Ibid.*, s. 136 and Eleventh Schedule; *ibid.*, 974, 1001.

(h) *Ibid.*, s. 73; *ibid.*, 981.

(i) *Dependable Upholstery, Ltd. v. Brasted*, [1932] 1 K. B. 291; Digest (Supp.).

(k) 14 Statutes 552 *et seq.*

(l) S. 1; 14 Statutes 708.

(m) 14 Statutes 713.

which are set out in sect. 7 of the Act (*n*) ; and Part V. of the L.G.A., 1929, also applies to London (*o*), subject to modifications. By sect. 70 (1) of the last-mentioned Act (*p*), the fact of any hereditaments in the County of London having in the course of any year become or ceased to be an agricultural, industrial, or freight-transport hereditament is, for the purposes of sect. 47 of the Valuation (Metropolis) Act, 1869, a ground for making and sending to the assessment committee a provisional list and for making a requisition for such list to be sent ; but a provisional list made on the ground that a hereditament has become an agricultural, industrial, or freight-transport hereditament must contain such particulars as are prescribed, and a provisional list may not be made on such ground unless a requisition has been made by the owner or occupier. The remedy under sect. 70 (4) of the Act of 1929 is exclusive, and if a claim is not made under that sub-sect. *mandamus* will not be granted (*q*). **[661]**

See, generally, title LONDON, RATING IN.

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(*n*) 14 Statutes 723. (*o*) See s. 84; 10 Statutes 936. (*p*) 10 Statutes 929.  
*(q) Stepney (Borough of) v. John Walker & Sons, Ltd.*, [1934] A. C. 365; Digest  
(Supp.).

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## DESTRUCTION OF CLOTHING

*See DISINFECTION.*

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## DESTRUCTIVE IMPORTED ANIMALS

*See MUSK RATS.*

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## DESTRUCTIVE INSECTS AND PESTS

|  |      |                             |     |
|--|------|-----------------------------|-----|
| INTRODUCTORY . . . . .                           | PAGE | PAGE                        |     |
| - - - - -  | 364  | COMPENSATION - - - - -      | 370 |
| CENTRAL AUTHORITY - - - - -                      | 365  | OFFENCES AND LEGAL PROCEED- |     |
| LOCAL AUTHORITIES - - - - -                      | 366  | INGS - - - - -              | 370 |
| SUMMARY OF EXISTING METHODS OF CONTROL - - - - - | 367  | LONDON - - - - -            | 371 |

*See also titles: AGRICULTURE; AGRICULTURE AND FISHERIES, MINISTRY OF.*

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**Introductory.**—The principal statutes dealing with this subject are the Destructive Insects Act, 1877, the Destructive Insects and Pests Act, 1907, and the Destructive Insects and Pests Act, 1927 (*a*). The Act of 1877 dealt solely with the Colorado beetle (*Doryphora decemlineata*) and had for its object the protection of potato crops. By sect. 1 of the Act of 1907, the powers of the Act of 1877 may be exercised in relation to any insect, fungus, or other pest destructive to agricultural or horticultural crops or to trees or bushes ; the expression “insects”

used in the Act of 1877 is extended to include all such insects, fungi, or other pests, and the expression "crop" includes all agricultural or horticultural crops, trees and bushes. Sect. 1 (5) of the Act of 1927 further extends these definitions so that the expression "insect" includes bacteria, and other vegetable and animal organisms, and any agent causative of a transmissible crop disease (b), and "crop" includes a seed, plant, or any part thereof.

In sect. 1 (1) of the Act of 1927, "the principal Act" is defined as meaning the Act of 1877 as amended by the Act of 1907, and as sect. 2 (1) of the Act of 1927 provides that the Act of 1927 and the principal Act are to be construed as one, it follows that any definition in one of the three Acts extends to the interpretation of all of them. [662]

**Central Authority.**—The central authority under the Act of 1877 was the Privy Council; but the Board of Agriculture Act, 1889, sect. 2 (1) and Part I. of First Schedule (c) transferred to the Board of Agriculture the functions of the Privy Council in relation to destructive insects. The title of the Board of Agriculture was altered to the M. of A. & F. by sect. 1 of the M. of A. & F. Act, 1919 (d).

The powers conferred on the M. of A. by sects. 1, 2 of the Act of 1877 (e), are :

- (1) To make orders for preventing the introduction into Great Britain of insects (f).
- (2) To prohibit or regulate the landing in Great Britain of potatoes, or the stalks or leaves of potatoes, or other vegetable substance, or other articles brought from any place out of Great Britain the landing whereof is likely to introduce an insect, and to direct or authorise the destruction of any such article, if landed.
- (3) To make such orders as the M. of A. thinks expedient for preventing the spreading in Great Britain of an insect. An order may direct or authorise the removal or destruction of any crop or substance on which an insect is found, or by means of which the insect may spread, and may authorise entry on any lands for the purposes of such removal or destruction. The keeping, selling, or exposing or offering for sale of living specimens of insects may be prohibited.

An order may enable an inspector authorised by the M. of A. to remove or destroy any crop infested with an insect which has been introduced into Great Britain and is specified in the order, or any crop to or by means of which the insect is likely to spread, and generally to take steps to prevent the spread of any such destructive insects, and to enter upon land (g).

The Minister may require a local authority to carry into effect any of his orders under the Acts (h).

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(b) The principal pests already dealt with by orders of the M. of A. are referred to in "Summary of Existing Methods of Control," at p. 367, *post*.

(c) 3 Statutes 401, 405.

(d) *Ibid.*, 451.

(e) 1 Statutes 62, 63.

(f) In this summary the term "insect" is used with the extended meaning given by the Destructive Insects and Pests Acts, 1907 and 1927.

(g) Act of 1927, s. 1; 1 Statutes 164.

(h) Act of 1877, s. 4; 1 Statutes 64. The present practice of the M. of A. is to administer the Acts centrally, and, in general, local authorities are not required to do more than publish information in their districts; in a few cases orders of local application have been made at the instance of local authorities and are administered by them.

The expenses of the execution of the Acts, except so far as paid by local authorities, are paid out of money provided by Parliament, but the expenses paid by the Minister must not exceed in any one year £2,000 (including compensation paid by the M. of A.) without the consent of the Treasury (*i*).

As to compensation, see "Compensation," *post*, p. 370.

As to penalties, see "Offences and Legal Proceedings, *post*, p. 370.

Orders of the M. of A. must be published in the *London Gazette*, and must be laid before both Houses of Parliament within ten days after the making of the order, if Parliament is then sitting, or otherwise within ten days after the next meeting of Parliament (*k*). Sect. 1 of the Rules Publication Act, 1893 (*l*) (which requires the giving of forty days' notice in the *London Gazette* before making statutory rules), does not apply to orders made under the Destructive Insects and Pests Acts (*m*).

Local authorities, to whom orders are sent by the M. of A. for publication, must publish the orders in such manner as the Minister directs, or, in the absence of such direction, in such manner as the local authority think sufficient and proper to ensure publicity (*n*).

Orders may impose fees in respect of any certificate given in pursuance of the order after inspection (*o*).

By sect. 3 (2) of the Forestry Act, 1919 (*p*), the powers of the M. of A. under the Destructive Insects and Pests Acts, so far as they relate to insects and pests destructive only to forest trees and timber are transferred to the Forestry Commissioners; so far as the powers relate to other insects and pests destructive alike to fruit trees or farm crops, and to forest trees and timber, the Forestry Commissioners are to exercise such powers in consultation with the M. of A. The M. of A. exercises on behalf of the Commissioners such of the transferred powers and duties as may, from time to time, be agreed between the Commissioners and the M. of A. **[668]**

**Local Authorities.**—By sect. 4 of the Destructive Insects Act, 1877 (*q*), the local authorities under the Contagious Diseases (Animals) Act, 1869, with their respective districts, local rates, clerks and committees, were constituted local authorities for the purposes of the Act of 1877. The Contagious Diseases (Animals) Act, 1869, was replaced by the Diseases of Animals Act, 1894, and under sect. 3 of that statute (*r*), the local authorities, are :

- (a) in boroughs which had a population of not less than 10,000 according to the census of 1881, the borough council;
- (b) for the residue of each administrative county, the county council.

In a borough, the committee, or executive committee appointed under sect. 31 and the Fourth Schedule to the Diseases of Animals Act, 1894 (*s*), is the committee charged with the administration of the

(*i*) Act of 1877, s. 9; Act of 1927, s. 1 (2); 1 Statutes 64, 164.

(*k*) Act of 1877, ss. 5, 8; 1 Statutes 64.

(*l*) 18 Statutes 1016.

(*m*) Act of 1907, s. 1 (2); 1 Statutes 70.

(*n*) Act of 1877, s. 5; 1 Statutes 64.

(*o*) Act of 1927, s. 1 (1) (b); 1 Statutes 164.

(*p*) 3 Statutes 444.

(*r*) *Ibid.*, 392.

(*q*) 1 Statutes 64.

(*s*) *Ibid.*, 406, 423.

Destructive Insects and Pests Acts. In an administrative county, and in a county borough which has established an agricultural committee, the council's powers under the Destructive Insects and Pests Acts stand referred to the agricultural committee by reason of sect. 7 (2) of the M. of A. & F. Act, 1919 (*t*). Under sect. 8 (2) of the Act of 1919, the agricultural committee must appoint a diseases of animals sub-committee, but it does not appear that this sub-committee are invested with the local authority's powers under the Destructive Insects and Pests Acts, in the absence of express delegation (*u*).

A local authority may be required by the M. of A. to carry into effect any of his orders, and must keep, in such manner and form as the Ministry direct, a record of proceedings under the Destructive Insects and Pests Orders, stating the date of the removal or destruction of any crop or substance, and other proper particulars, which record is to be admitted in evidence (*a*).

As to publication of orders by local authority, see *ante*, p. 366.

As to compensation, see "Compensation," *post*.

The only officer of a local authority referred to in Destructive Insects Act, 1877, is the clerk, but the power of appointing other officers is conferred by sects. 105 and 106 of the L.G.A., 1933 (*b*). In addition the M. of A. occasionally confers, in orders under the Destructive Insects and Pests Acts, a power on the local authority of appointing officers (*c*). If officers of the agricultural education staff are required to perform duties under the Destructive Insects and Pests Acts the M. of A. may require an apportionment of salaries and expenses for the purposes of the claim for grant under the Agricultural Education Grant Regulations.

The expenses of local authorities in relation to the Destructive Insects and Pests Acts, are defrayed, in boroughs out of the general rate fund, and in counties out of the county fund, as expenses for general or special county purposes, as the case may require (*d*).

**[664]**

**Summary of Existing Methods of Control.**—The orders of the M. of A. are directed to securing control by :

- (a) prohibiting the importation of diseased plants, and regulating importation from countries which are, or may be, infected ;
- (b) preventing dealing in diseased plants ;
- (c) prohibiting or regulating planting in, or removal of plants from, infected areas or infected places ;
- (d) enforcing the application of preventive measures, by treatment of plants ;
- (e) requiring notification of the presence of, or affection of plants by, insects.

(*t*) 3 Statutes 453.

(*u*) Where the powers of a county council in relation to agricultural education are referred to the agricultural committee under M. of A. & F. Act, 1919, s. 7 (2) (i), the M. of A. has concurred in a delegation to the agricultural education sub-committee, of the council's powers under the Destructive Insects and Pests Acts.

(*a*) Act of 1877, s. 4 ; 1 Statutes 64.

(*b*) 26 Statutes 361.

(*c*) E.g. The Black Currant Mite (Norfolk) Order of 1928, Art. 6.

(*d*) L.G.A., 1933, ss. 180, 181, 185 ; 26 Statutes 404, 405, 407. S. 4 of the Act of 1877 is in part repealed by the Act of 1933.

The principal orders in force are :

1. The Destructive Insects and Pests Order, 1933 (*e*), which empowers an inspector to enter premises where he has reason to believe there is an insect (*f*) of a non-indigenous species (*g*), or any plant attacked by such an insect, and make an examination ; notice may be served on the occupier of the premises requiring him to take the steps set out in the notice (including, if necessary, the destruction of the insect) for the prevention of the spread of the insect. The keeping, sale or release of non-indigenous insects may be prohibited. The inspector is also given powers of obtaining information (*cf.* the order mentioned in para. 2, *post*). **[664A]**

2. The Sale of Diseased Plants Order, 1927 (*h*), prohibits the sale or offering or exposing for sale, of any plant (*i*) substantially attacked by any insect or pest mentioned in the First Schedule (*k*) to the order, or which bears evidence of having been attacked by any insect or pest specified in the Second Schedule (*l*). Persons who have in their possession, or under their charge, diseased plants must, if required in writing so to do by the Minister or by an inspector, give all information in their possession as to the person in whose possession, or under whose charge the plant is, or has been ; a person so giving information is not available as a witness, except in a prosecution for failing to comply with the provisions of the order as to giving information. The order gives powers of entry to inspectors, provides for action to prevent the movement or sale of diseased plants, and enables an inspector to require the destruction or disinfection of diseased plants. **[665]**

3. The Importation of Plants Order, 1933 (*m*), prohibits the landing in England and Wales of the plants (*n*) mentioned in the First Schedule (*o*), and potatoes, except when accompanied by the prescribed certificate. There are special prohibitions and restrictions relating to potatoes, raw apples and raw vegetables. Powers of taking administrative steps, and of obtaining information, are given to inspectors. **[666]**

4. The Bulb Diseases (Isles of Scilly) Orders of 1923 and 1924 (*p*), are local orders regulating the importation of daffodil or narcissus bulbs into the Isles, and providing for their treatment (*q*) at the Bulb Treating Station, St. Mary's, Isles of Scilly. **[667]**

5. By the Colorado Beetle Order, 1933 (*r*), the occupier of land

(*e*) S.R. & O., 1933, No. 557.

(*f*) "Insect" includes bacteria and any other vegetable or animal organisms and any agent causative of a transmissible crop disease (Art. 2).

(*g*) "Non-indigenous species" means a species or kind which is destructive to agricultural or horticultural crops or to trees or bushes, and which at the date of the commencement of the order (July 15, 1933) was not established in Great Britain.

(*h*) S.R. & O., 1927, No. 350.

(*i*) "Plant" includes tree and shrub and the seeds, tubers, bulbs, layers, cuttings or any other parts of a plant (Art. 1).

(*k*) Fruit tree cankers, American gooseberry mildew, silver leaf, black currant mite, woolly aphis, all scale insects, brown tail moth, rhododendron bug, powdery or corky scab of potatoes.

(*l*) Apple capsid.

(*m*) S.R. & O., 1933, No. 558.

(*n*) In this order "plant" includes tree and shrub, and the fruit, seeds, tubers, bulbs, corms, rhizomes, roots, layers, cuttings and other parts of a plant (Art. 1).

(*o*) All living plants and parts thereof (except seeds) for planting.

(*p*) S. R. & O., 1923, No. 1572, 1924, No. 1122.

(*q*) By hot water, mainly for the eradication of eel-worm.

(*r*) S.R. & O., 1933, No. 830.

on which Colorado beetle exists or is suspected to exist, is required to notify the M. of A.; provision is made for declaring "infected places," restricting the use of the land therein, and the removal of crops therefrom, and for taking action to prevent the spread of the beetle. The M. of A. may pay compensation for crops removed or destroyed.

**[668]**

6. The Importation of Elm Trees and Conifers (Prohibition) Order, 1933 (*s*), prohibits the importation into England and Wales of certain trees. **[669]**

7. The Onion Smut Order, 1921 (*t*), requires notification by occupiers of land where onion smut exists; provides for the declaration of infected places, and restricts dealings with and movement of onions or leeks affected with disease, or grown in an infected place. The planting of onions or leeks in infected places is restricted, and inspectors have powers of entry, and of obtaining information. **[670]**

8. The Silver Leaf Order, 1923 (*u*), requires the destruction by fire before July 15 in each year of the dead wood of plum and apple trees; an inspector may by notice require the destruction by fire of any wood of any kind on which there are visible fruiting bodies of the fungus *Stereum purpureum*. **[671]**

9. The Wart Disease of Potatoes Orders of 1923 and 1929 (*a*), require notification of outbreaks of disease, prohibit the sale of diseased potatoes, and prescribe the precautions to be adopted in the case of an outbreak. Only potatoes of an approved immune variety may be planted in land infected with wart disease. Restrictions are imposed on the sale and planting of seed potatoes (*b*), and on the movement of potatoes out of infected areas. Inspectors are given powers of entry and of obtaining information. **[672]**

It is the practice of the M. of A. to make annually an order restricting the importation of raw cherries from European countries, with a view to the prevention of the introduction of the Cherry Fruit Fly (*c*).

In addition to the foregoing, orders of local application (*d*) are made at the request of local authorities for the purpose of dealing with local problems, and are administered and enforced by the local authorities named therein. With the exception of the Apple Capsid (Essex) Order, 1932 (*e*), which requires notification to the local authority of the receipt by a person other than a private grower, of apple trees, or gooseberry or currant bushes for planting, these orders require action by a local authority on the complaint of a grower who apprehends infection from premises other than the land occupied by him. Provision is made for inspection by an officer of the local authority, and for the service, and enforcement, of notices requiring treatment of infected

(*s*) S.R. & O., 1933, No. 1011.

(*t*) S.R. & O., 1921, No. 1620.

(*u*) S.R. & O., 1923, No. 616.

(*a*) S.R. & O., 1923, No. 627; 1929, No. 1123.

(*b*) The order of 1923 requires that only certified immune potatoes may be planted in allotments not exceeding  $\frac{1}{4}$  of an acre, or in private gardens in a scheduled area in Lincs. (Holland), the Isle of Ely and Norfolk, subject to certain exceptions detailed in the order.

(*c*) See e.g. S.R. & O., 1933, No. 409.

(*d*) E.g. The Black Currant Mite (Norfolk) Order, 1928 (S.R. & O., 1928, No. 1053); the Fruit Tree Pests (West Norfolk) Order, 1931 (S.R. & O. 1931, No. 293); the Fruit Tree Pests (Wisbech District) Order, 1931 (S.R. & O., 1931, No. 575); the Apple Capsid (Essex) Order, 1932 (S.R. & O., 1932, No. 868); the Watermark Disease (Essex) Order, 1933 (S.R. & O., 1933, No. 1).

(*e*) S.R. & O., 1932, No. 868.

trees or plants ; as an alternative to treatment, the person upon whom notice is served may destroy the infected trees or plants.

Included in this class of order is the Watermark Disease (Essex) Order, 1933 (*f*), made by the Forestry Commissioners. [678]

**Compensation.**—The Destructive Insects and Pests Acts give optional powers of paying compensation for the removal or destruction of any crop (*g*). The M. of A., where by order he directs or authorises the removal or destruction of any crop, may direct or authorise the payment of compensation by the local authority (*h*), but no order directing the payment of compensation can be made unless the local authority consent to make the payment (*i*). The M. of A. may pay compensation out of moneys provided by Parliament in respect of any crop removed or destroyed by or under the instructions of an inspector authorised by him (*k*). The value of the crop for compensation purposes is the value it would have had at the time of its removal or destruction ; the compensating authority may require the value to be ascertained by their own officers, or by arbitration ; compensation may be withheld, if the owner or person in charge of the crop has, in the judgment of the compensating authority, contravened or failed to comply with any order under the Destructive Insects and Pests Acts (*l*). [674]

**Offences and Legal Proceedings.**—Offences are to be prosecuted summarily, and penalties are to be applied in the same manner as penalties under the Diseases of Animals Acts (*m*). The maximum penalty for a first offence which may be imposed by an order is £10. An order may impose a maximum penalty of £50 in respect of a second or subsequent offence (*n*). Unless the order restricts the right to prosecute, it would seem that any one may proceed for the recovery of a penalty. Under sect. 57 (5) of the Diseases of Animals Act, 1894 (*o*), the court may direct a part (not exceeding one-half) of any fine to be paid to the prosecutor.

A prosecution in connection with the movement, sale, consignment or planting of potatoes may be instituted at any time within twelve months from the day on which the alleged offence was committed (*p*).

As to protection of persons giving information, see clause 7 of the Destructive Insects and Pests Order, 1933 (*q*), clause 3 of the Sale of Diseased Plants Order, 1927 (*r*), clause 12 of the Importation of Plants Order, 1933 (*s*), clause 8 of the Onion Smut Order, 1921 (*t*), and clause 14 of the Wart Disease of Potatoes Order, 1923 (*u*).

(*f*) S.R. & O., 1933, No. 1.

(*g*) For the meaning of "crop," see *ante*, p. 365.

(*h*) Act of 1877, s. 3 ; 1 Statutes 63.

(*i*) Act of 1907, s. 1 (1) ; 1 Statutes 69.

(*k*) Act of 1927, s. 1 (2) ; 1 Statutes 164 ; but the total amount of compensation and expenses incurred by the M. of A. in the administration of the Destructive Insects and Pests Acts in any year is not to exceed £2,000, except with the consent of the Treasury.

(*l*) Act of 1877, s. 3, as amended by Act of 1927, s. 1 (4) ; 1 Statutes 63, 165.

(*m*) Act of 1877, s. 2 ; 1 Statutes 63.

(*n*) Act of 1927, s. 1 (1) (c) ; 1 Statutes 164.

(*o*) 1 Statutes 420.

(*p*) Act of 1927, s. 1 (3) ; 1 Statutes 165.

(*q*) S.R. & O., 1933, No. 557.

(*r*) S.R. & O., 1927, No. 350.

(*s*) S.R. & O., 1933, No. 558.

(*t*) S.R. & O., 1921, No. 1620.

(*u*) S.R. & O., 1923, No. 627.

As to protection of persons planting potatoes sold to him as immune and certified, see clause 6 (3) of the order last mentioned.

As to the penalty for an obstruction of inspectors authorised by the M. of A. (a), to enter or examine, see clause 1 of the Destructive Insects and Pests Order, 1933 (b), and clause 8 of the Sale of Diseased Plants Order, 1927 (c). [675]

**London.**—By sect. 4 of the Act of 1877 (d), that Act is to be enforced by the local authorities for diseases of animals. In London, therefore, the Common Council are the local authority for the city, and the L.C.C. for the remainder of the county (sect. 3 of the Diseases of Animals Act, 1894 (e)). The carrying out of their duties in this behalf is referred by the L.C.C. to their Public Control Committee and Department. [676]

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(a) For the penalty for obstructing an authorised officer of a local authority, reference should be made to the particular order authorising the local authority to exercise powers under the Destructive Insects and Pests Acts.

(b) S.R. & O., 1933, No. 557.

(c) S.R. & O., 1927, No. 350.

(d) 1 Statutes 64.

(e) *Ibid.*, 392; see also p. 395, *post.*

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## DESTRUCTORS

*See REFUSE.*

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## DEVELOPMENT AND ROAD IMPROVEMENT FUNDS

*See ROAD IMPROVEMENT.*

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## DEVELOPMENT OFFICER

*See PUBLICITY OFFICER.*

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# DIFFERENTIAL RATING

|   | PAGE |   | PAGE |
|---|------|---|------|
| INTRODUCTORY - - - - -                        | 372  | SPECIAL SCHEMES - - - - -                     | 375  |
| ADAPTATION UNDER R. & V.A.,<br>1925 - - - - - | 373  | ADJUSTMENT OF PAROCHIAL<br>BALANCES - - - - - | 375  |
| SAVINGS IN R. & V.A., 1925 - - - - -          | 374  | ALTERATIONS OF AREA - - - - -                 | 376  |
| SCHEMES - - - - -                             | 375  | LONDON - - - - -                              | 377  |

*See also titles :*

|                                |                                |
|--------------------------------|--------------------------------|
| ALTERATION OF AREAS ;          | RATES AND RATING ;*            |
| FINANCIAL ADJUSTMENTS ;        | RATING OF SPECIAL PROPERTIES ; |
| LONDON, RATING IN ;            | SPECIAL RATES.                 |
| PRIVATE IMPROVEMENT EXPENSES ; |                                |

\* This title contains a list of all the titles bearing on the subject, with a description of their scope and interconnection.

**Introductory.**—The term “differential rating” may be used to indicate (1) an arrangement commonly made on the extension of a borough or urban district, whereby the ratepayers of the added area, for a period allowed by a local Act or order, are given an abatement from the full amount in the £ of the rates leviable in the extended borough or district; or (2) the levy on certain classes of property of rates on a part only of the full rateable value, or at a reduced rate in the £ (aa).

Differential rating may also arise as a consequence of a financial adjustment made on an alteration of area.

Curiously enough, the enactments referring to the provisions which may be inserted in an order for the extension of a borough or urban district do not in so many words authorise the allowance of an abatement from rates to the ratepayers of the added area. Such an allowance, however, seems to be authorised by the provisions which allow the inclusion in the order of all matters which appear necessary or proper for bringing into operation and giving full effect to the order (aa). One common object of differential rating is to soften a disparity between the rates leviable in the district to which the added area belonged, and the higher level of the rates in the borough or urban district to which the added area is transferred, but to support a claim it is desirable to show that the full municipal services cannot be provided in the added area for some years, and that it is not fair that the ratepayers should pay as if these services were being provided for them.

Before the consolidation of rates effected by the R. & V.A., 1925 (b), it was important that any abatement should extend only to a rate which was wholly expended by the council of the extended borough or urban district, e.g. the general district rate; for a limitation in the amount of the poor rate would obviously give rise to difficulties, in view of the large proportion of the poor rate devoted to meeting the cost of the relief of the poor and other services met by

(a) S. 211 (4) of the P.H.A., 1875 (13 Statutes 715), provides a method by which an urban authority may divide its district for all or any purposes of the Act and make separate assessments. This system is not, however, frequently resorted to.

(aa) See s. 59 (4) (d), (e) of the L.G.A., 1888 ; 10 Statutes 735 ; and s. 148 (1) of the L.G.A., 1933 ; 26 Statutes 386.

(b) 14 Statutes 617.

precepting authorities. Similarly, where an abatement of this kind is now allowed from the general rate, it is the practice to provide that the relief from rates so allowed shall not exceed the amount in the £ of that part of the general rate which is levied to meet the expenses of the council of the extended borough or urban district.

Provisions for the relief of areas added to boroughs or urban districts have taken various forms, but the most common provisions either impose for a period of years an absolute limit on the rate in the £ to be levied on the added area, or provide that the rate in the £ in the added area shall, for a period of years, be less by a specified amount than the rate levied in the remainder of the borough or urban district. This specified amount is usually to be reduced each year, so that it vanishes at the end of the period of differential rating, and this form of clause has been almost invariably adopted of recent years.

In another form of clause an exemption is given to the added area from rates levied for specified purposes, until the county council resolve that the exemptions from any given purpose should be removed on the ground that the service in question has been extended to the added area.

The second class of differential rating already mentioned in general relates to properties, usually called special properties, being tithe rentcharge, railways, canals, water reservoirs, and other properties entered in Part II. of the Second Schedule to the R. & V.A., 1925 (*c*). In general, these special properties were allowed an abatement from rates for sanitary purposes only, such as the general district rate, or rate for special sanitary expenses, not from the poor rate. These properties will be more fully dealt with in the title RATING OF SPECIAL PROPERTIES. [677]

**Adaptation under R. & V.A., 1925.**—On the consolidation by sect. 2 of this Act (*d*) of the poor rate with the general district rate and other rates to form the general rate, provision was made for the adaptation of any abatements allowed to special properties (see preceding paragraph) in their application to the new general rate.

As respects the special properties, the abatement of three-fourths of the general district rate of a borough or urban district was by sect. 22 (1) (*e*) and Part II. of the Second Schedule to the Act of 1925 (*e*), converted into a deduction from the net annual value to arrive at the rateable value for the purposes of the general rate. This deduction was to be arrived at for each borough or urban district by estimating the percentage of the net annual value which corresponded with the average relief from rating enjoyed by occupiers of special properties in the particular area between April 1, 1914, and March 31, 1924. The deduction in each locality varies with the weight of the poor rate as compared with that of the sanitary rate. Thus where the poor rate was 10s. in the £ and the general district rate was 5s. in the £, the occupier of a special property with a rateable value of £100 paid £50 in poor rate, and 5s. in the £ on £25 ( $\frac{1}{4}$  of £100), or £6 5s. in sanitary rate. He therefore paid in all £56 5s., while if no abatement had been given, he would have paid £75 in respect of the total rates of 15s. in the £. In order to arrive at the same result on a general rate of 15s. in the £, he would therefore be given a deduction of 25 per cent. of the net annual value to arrive at the rateable value. It will be seen that

(*c*) 14 Statutes 693.

(*d*) *Ibid.*, 618.

(*e*) 14 Statutes 647, 693.

a general rate of 15*s.* in the £ on £75 rateable value produces £56 5*s.*, the sum paid before the rates were consolidated.

These deductions were fixed as respects each borough and urban district by a series of orders made by the M. of H., called the Ascertainment of Rateable Values Orders, and these orders applied where the relief to a special property was given by the general law. Where the relief was given by a local Act or order, a scheme had to be made under sect. 64 of the Act of 1925 (*f*) for the purpose of securing the continued operation of the privilege.

In a rural district, special rates are levied to meet expenditure on special sanitary expenses and on lighting streets in a rural parish, on one-quarter of the rateable value of special properties (*g*), the rateable value of railways and canals for this purpose being the reduced rateable value of one-fourth allowed by sects. 3, 4 of the R. & V. (Apportionment) Act, 1928 (*h*), and sect. 68 of the L.G.A., 1929 (*i*). See also title SPECIAL RATES.

Similarly, in a borough or urban district, the derating provisions already mentioned operate on the rateable value after the deduction authorised by an Ascertainment of Rateable Values Order or scheme has been made ; see the proviso to sect. 68 (1) of the L.G.A., 1929 (*i*). **[678]**

**Savings in R. & V.A., 1925.**—Sect. 64 (*f*) of the Act of 1925 enacts that save as otherwise expressly provided, nothing in it shall affect any exemption from, or privilege in respect of, rating conferred by any local Act or order on the occupiers of hereditaments in any particular part of a rating area, or on the occupiers of any particular hereditaments ; and if an owner had been made liable by a local Act for a portion of a rate in relief of the occupier, without being entitled to any commission, reduction, or allowance, he was to remain liable. So also if any one was exempt from rates for highway purposes under sect. 33 of the Highway Act, 1835 (*k*), the exemption continued. The term "local Act" includes a provisional order confirmed by Parliament (*l*).

These savings applied only to those rates levied by the rating authority which were leviable by them before April 1, 1927 (*i.e. the appointed day*), and the exemption or privilege was not to extend to that part of the general rate which did not represent a rate levied by them before that day (*m*). If, therefore, by a local Act differential rating had been granted on rates "which are or shall be leviable" by the council, the words affecting future rates would no longer be operative. When the terms of the local Act were settled, it would not be contemplated that the day would come when the poor rate would be levied by the council instead of by the overseers, and the proviso in question makes it clear that if any exemption or privilege has been granted in respect, *e.g.* of the general district rate, this does not now extend to the part of the general rate which represents the former poor rate or any other rate which was not before entitled to differential rating. **[679]**

(*f*) 14 Statutes 683.

(*g*) See R. & V.A. 1925, s. 3 (2) ; 14 Statutes 622.

(*h*) 14 Statutes 715—718.

(*i*) 10 Statutes 928.

(*k*) 9 Statutes 64 ; *e.g.* by reason of a liability to repair *ratione tenuræ*.

(*l*) R. & V.A., 1925, s. 68 ; 14 Statutes 686.

(*m*) *Ibid.*, s. 64 (1), proviso ; *ibid.*, 683.

**Schemes.**—For the purpose of securing the operation of any privilege or exemption of the kind mentioned in sect. 64 (1) of the Act of 1925, the rating authority were required to submit to the M. of H. a scheme for the purpose, and if they failed to do so the Minister might himself make a scheme (*n*).

The directions contained in paras. 2, 4, 7 of Part III. of the Second Schedule to the Act of 1925 (*o*) applied to the preparation and approval of a scheme for the continuance of any exemption or privilege (*p*).

The M. of H. might approve a scheme either with or without modification, but before approval was to publish notice of his intention to approve and of any modifications proposed (*q*). If there was objection to the scheme the Minister could direct that a local inquiry be held. After the inquiry he might approve the scheme either as originally submitted or with modifications, and if objection was withdrawn, the scheme came into force. If objection was not withdrawn, the scheme did not have effect until confirmed by Act of Parliament (*r*).

Power was given to the Minister to make regulations with respect to the preparation and submission of schemes, and on application by any person affected by the scheme, he could by order after publication of notice, vary or amend a scheme in force as he thought proper (*s*).

By sect. 61 of the Act of 1925 (*t*), as in part repealed by the L.G.A., 1933, a general power is given to the M. of H. to direct local inquiries to be held for the purposes of the R. & V.A., 1925. **[680]**

**Special Schemes.**—Where (1) differential rating provisions, not of a permanent character, were in operation in a borough or urban district during the ten years beginning April 1, 1914, or during some part of that period; or (2) the borough or urban district was created or extended between April 1, 1914, and April 1, 1927, a special scheme had to be made under the proviso to para. 1 of Part III. of the Second Schedule to the Act of 1925 (*t*). The distinction between a scheme and a special scheme is that whereas by a scheme the basis of deduction in arriving at the rateable value of special properties is laid down by Part II. of the schedule, this basis may by a special scheme be modified and adapted so as to secure a fair and equitable percentage of deduction in the special circumstances of the case.

As respects making and approval, a special scheme is subject to the same provisions as a scheme (*u*). **[681]**

**Adjustment of Parochial Balances.**—In a few instances, differential rating may still be caused through the M. of H. having extended the period during which an adjustment of parochial balances and liabilities under para. 5 of the Seventh Schedule to the R. & V.A., 1925 (*a*) was ordinarily to be made. Where such an adjustment is being made either by an increase or decrease, as the case may be, in the rates levied, sect. 76 of the L.G.A., 1929 (*b*), provides for the reduction of any balance remaining due on April 1, 1930, by a proportion corresponding

(*n*) R. & V.A., 1925, s. 64 (2) (a), (b); 14 Statutes 684.

(*o*) 14 Statutes 694.

(*p*) R. & V.A., 1925, s. 64 (2) (c); 14 Statutes 684.

(*q*) *Ibid.*, Second Schedule, Part III., para. 2; *ibid.*, 694.

(*r*) *Ibid.*, paras. 4, 7; *ibid.*, 695.

(*s*) 14 Statutes 681. As to powers of inspectors and costs, see L.G.A., 1933, s. 290; 26 Statutes 459.

(*t*) 14 Statutes 694.

(*a*) 14 Statutes 703.

(*u*) See *supra*.

(*b*) 10 Statutes 932.

with the reduction in the rateable value of the parish effected by derating. **【682】**

**Alterations of Area.**—Differential rating may also arise by reason of the alteration of the area of a borough, district or parish, apart from the allowance of relief to ratepayers of an added area, to which allusion has already been made (c). Although a few of the county reviews under sect. 46 of the L.G.A., 1929 (d), have not yet been carried into effect, and the incidental provisions to be inserted in the outstanding orders, and the financial adjustments will be governed by sects. 59, 62 of the L.G.A., 1888 (e), it will be convenient to indicate how differential rating may arise by a description of the financial arrangements authorised in Part VI. of the L.G.A., 1933 (f), where an order for the alteration of areas has been made under that Part of the Act of 1933.

An order may make temporary provision for meeting the debts and liabilities of the various public bodies affected (g). Thus the outstanding debts and liabilities of the council of an abolished district could in an exceptional instance be directed to be paid out of a rate restricted to the area of the abolished district, instead of over the whole of the enlarged area.

Public bodies may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities and expenses affected by the alteration of area, and any financial relations (h), and the agreement may provide for payment by either party to the agreement in respect of property, debts, functions, and liabilities transferred or retained (i). The sum required for the adjustment may be paid out of such fund or rate as may be specified in the agreement of adjustment or arbitrator's award, or if no fund or rate is specified, then as otherwise provided in the section (k). A public body may borrow for the payment of a capital sum under an adjustment (l).

Any increase of burden thrown on the ratepayers in consequence of an alteration of boundaries or other change is to be met by the payment to the local authority of such sum as seems equitable (m). Rules for determining the sum to be paid in respect of increase of burden on ratepayers are laid down in the Fifth Schedule to the Act of 1933 (n). Regard is to be had to the difference between the burden on the ratepayers as a result of the alteration of boundaries or other change, and the burden if no change had been made, and the length of time it is expected the increased burden will continue (o).

The sum payable to the local authority to meet the increase of burden is to be based on the annual average increase of burden (p). If the increase of burden is due to the cost of road maintenance, the sum payable must not exceed the average annual increase of burden multiplied by twenty-one; and in other cases by fifteen. If the sum is payable by instalments or by way of annuity, the capitalised

(c) See *ante*, pp. 372, 373.

(d) 10 Statutes 916.

(e) See s. 66 of the L.G.A., 1929; 10 Statutes 927.

(f) 26 Statutes 374.

(g) S. 148 (1) (f); 26 Statutes 387. See also the definition of "public body" in s. 305; 26 Statutes 467.

(h) S. 151 (1); 26 Statutes 389.

(i) S. 151 (2).

(k) S. 151 (4).

(l) S. 151 (5).

(m) S. 152 (1) (b).

(n) 26 Statutes 507.

(o) Fifth Schedule, r. 1; 26 Statutes 507.

(p) Fifth Schedule, r. 2.

value of the instalments or annuity must not exceed a sum so calculated (q).

Unless it is otherwise agreed, a sum payable for the cost of county roads is to be paid by way of annuity (r).

A considerable sum may frequently be payable under a financial adjustment for increase of burden, and this may have to be raised by an additional item of the general rate, the item being levied on a part only of a borough or district. If a loan be raised to pay the sum due, the loan charges may also fall to be defrayed from an additional item similarly levied. This course would create differential rating. [683]

**London.**—See title LONDON, RATING IN. [684]

(q) Fifth Schedule, r. 2.

(r) *Ibid.*, r. 3.

## DIPHTHERIA

*See INFECTIOUS DISEASES.*

## DIRECTOR OF EDUCATION

|                              | PAGE |                             | PAGE |
|------------------------------|------|-----------------------------|------|
| INTRODUCTION                 | 377  | DUTY TO ACCOUNT             | 384  |
| APPOINTMENT                  | 378  | APPEARANCE IN LEGAL PRO-    | 384  |
| TENURE OF OFFICE             | 379  | CEEDINGS                    | 384  |
| QUALIFICATIONS AND RECRUIT-  |      | COMPENSATION FOR LOSS OF    |      |
| MENT                         | 380  | OFFICE                      | 384  |
| RIGHTS AND DUTIES            | 382  | INTEREST IN CONTRACTS, ETC. | 385  |
| ORGANISATION OF A DIRECTOR'S |      |                             |      |
| OFFICE                       | 383  |                             |      |

*See also titles:* DUTIES AND POWERS OF OFFICERS ;  
EDUCATION ;  
SUPERANNUATION ;  
TRANSFER OF OFFICERS.

**Introduction.**—The office of "Director of Education" was unknown before the passing of the Education Act, 1902 (a), when school boards were abolished and the councils of counties, boroughs and urban districts became local education authorities. School boards had their clerks or correspondents, but many local education authorities for large and important areas recognised that their chief officer should not only be capable of organising an administrative department and carrying out clerical duties, but should also be able to advise on educational matters, assist in the formulation of educational policy and generally act in regard to educational matters much as did the M.O.H. in medical matters.

In not a few cases, the clerk of the school board, or the secretary of the technical instruction committee, was subsequently appointed clerk or secretary of the education committee of a borough or urban district, but as these officers retired, their places were, in many instances, filled by directors of education.

The title "Director of Education" is by no means in general use. A large number of local education authorities still prefer to call their chief officer "secretary to the education committee," although in regard to his duties, academic qualifications and experience, he might be termed "Director." Others, on the other hand, prefer to designate the officer "Chief Education Officer," while London terms him "the Education Officer."

From this it will be seen that the official title of the chief education officer of a local education authority is little guide to his duties or qualifications, but for the sake of simplicity the expression "Director of Education" will be used in this article to include all chief education officers whatever their official title as such may be. [685]

**Appointment.**—Directors of education and other chief education officers are appointed by the local education authority by virtue of sect. 148 of the Education Act, 1921 (b). But this section only provides for the appointment of such officers in general as the local education authority consider necessary, and does not direct that a chief officer for the education service shall be appointed. It is a noticeable fact that although sect. 106 of the L.G.A., 1938 (c), requires borough councils to appoint town clerks, treasurers, medical officers, surveyors and sanitary inspectors, they are under no similar obligation to appoint directors of education or any officer to supervise the administration of education (d). There are no specific duties of the education officers of a local authority mentioned in sect. 148 of the Education Act, 1921 (e). Sub-sect. (3) of that section merely states that such officers as are appointed shall perform such duties as may be assigned to them by the authority or authorities who appoint them.

There are, however, still some local education authorities who have appointed no such officer. In these cases the administration of education is carried out by the town clerk, or clerk of the council.

As a director of education is a chief officer of the council, the power of making such an appointment would usually be reserved to the council, but it is only to be expected that when a director of education is to be appointed the chief voice in the matter should be given to the education committee.

After the usual advertisement in the education journals—and sometimes in *The Times* newspaper—in which the required qualifications of candidates and salary offered are set out, the application forms are frequently referred to a small sub-committee who carefully scrutinise them with a view to making recommendations for the formation of a short list.

(b) 7 Statutes 204.

(c) 26 Statutes 361.

(d) The Association of Education Committees have endorsed and supported the principle that every local education authority should be required by statute to appoint a fit person as Chief Education Officer. See *Education* of December 22, 1938.

(e) 7 Statutes 204.

The consideration by the full education committee, or a special sub-committee appointed for the purpose, of the application forms which appear to relate to the most suitable candidates usually follows, and on their decision from four to six candidates are usually invited to attend for an interview. [686]

Where a local education authority have delegated all powers which may be delegated to their education committee (*f*), then this will include the power to appoint all officers including a director, and so the education committee may proceed to make an appointment—usually from among candidates invited to the interview—without reference to the council.

But, while delegating considerable powers to their education committee, some authorities retain the right of appointing their more important officers, such as the director and deputy director, in which case it seems usual for the education committee to select about three candidates, from among those interviewed by them, for a final selection to be made by the council.

When the education committee or the council, as the case may be, have offered the appointment to a candidate and he has accepted it, the matter is then concluded, unless there is a medical examination to be passed. There is no need to obtain the approval of a Government department. Legally the Board of Education are not interested, although in practice their officers appear to watch such matters with more than passing interest, for the relation between the local education authority and the Board of Education can often be considerably affected for good or evil by a director of education.

It should be remembered that by sect. 122 of the L.G.A., 1933 (*g*), a member of a council is disqualified until the expiration of twelve months after he has ceased to be a member, for being appointed by that council to any paid office, other than that of chairman, mayor or sheriff. It would seem that where a director of education is appointed by an education committee under a power delegated to them by the council, the appointment must be regarded as an appointment by the council within the meaning of sect. 122, and that the disqualification would still apply. [687]

**Tenure of Office.**—The security of tenure conferred on the clerk of a county council (*h*) or the county M.O.H. (*i*), who cannot be dismissed without the consent of the M. of H., does not apply to a director of education, for he can be dismissed without reference to the Minister of Education or to any other Minister of the Crown.

His security of tenure is similar to that of any of the clerical or teaching staff of the education committee. That is, under sect. 148 of the Education Act, 1921 (*k*), he holds office during the pleasure of the local education authority. This means that, notwithstanding any agreement between the director and the local education authority providing that the appointment shall only be terminable by a reasonable stated notice, a director may be dismissed without notice (*l*). This has now, to some extent, been rectified by sect. 121 of the L.G.A.,

(*f*) See s. 4 (2) (b) of the Education Act, 1921; 7 Statutes 132.

(*g*) 26 Statutes 371.

(*h*) L.G.A., 1933, s. 100; 26 Statutes 359.

(*i*) *Ibid.*, s. 103; *ibid.*, 360.

(*k*) 7 Statutes 204.

(*l*) *Brown v. Dagenham U.D.C.*, [1929] 1 K. B. 737; Digest (Supp.).

1933 (*m*), which allows to be included in the terms of any officer's appointment a provision that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed. As this section applies notwithstanding any provision in another enactment (*n*), sect. 148 of the Education Act, 1921, is in this respect modified by sect. 121 of the L.G.A., 1933. The same section also validates any provision in the appointment of an officer—including a director of education—who on June 1, 1934, held office under an agreement which purported to provide for notice being given before the appointment is terminated.

The period of a notice to terminate the appointment of a director of education is usually agreed at three months. [688]

**Qualifications and Recruitment.**—It has been stated previously in this article that neither by statute nor by Government regulation are there any minimum qualifications for a director of education. The matter then resolves itself into a consideration of what is usual and desirable. The consideration falls naturally into two aspects, viz. (i.) academic qualifications, and (ii.) qualifications by reason of experience.

In regard to academic qualifications, graduation has usually of recent years been required by an appointing local education authority. A degree in arts or science is the usual minimum academic qualification of a director, but with the growing interest in technical education the time may not be far ahead when appointments will be made from among candidates who have graduated in commerce, economics or engineering. A number of directors with legal qualifications have been appointed, and as the administration of the law relating to education becomes more complex, legal knowledge and experience should be a useful addition to a director's qualifications. The qualifications derived from experience, it is submitted, are no less important than academic qualifications.

One who is to be the director in practice as well as by title should, it would seem, stand in the same relation to teachers, lecturers, etc., as does the M.O.H. to his staff of medical practitioners, nurses, etc. That is, he should have had, as far as possible, similar professional training and experience to themselves. This is the view that appears to be held by most local education authorities in these days, and as a result applicants for appointment as directors are usually expected to have had teaching experience of as wide a nature as possible.

It is a significant fact that under the provisions of the Teachers (Superannuation) Act, 1925 (*o*) (in which Act education administrators are termed "organisers"), before an education administrator can benefit from that Act, he must, *inter alia*, previous to his appointment as such, have been engaged for not less than three years as a teacher in a capacity approved by the Board of Education (*p*). [689]

Education is still for administrative purposes regarded as elementary, secondary and technical, and the director for a county or county borough is called upon to administer all three branches. Experience

(*m*) 26 Statutes 370.

(*n*) E.g. s. 148 (1) of the Education Act, 1921; 7 Statutes 204.

(*o*) 7 Statutes 317.

(*p*) S. 14 (1); 7 Statutes 331.

in teaching in all these is hardly to be expected, but a number of directors have taught in schools coming under two of these heads.

Recognition by the Board of Education as a certificated teacher and/or admission to the membership of the Royal Society of Teachers is evidence that some teaching experience, even if of limited range and time, has been gained.

Those who enter the administrative service early in life have been in general assistant teachers only, but the value of having held the post of head of a school, polytechnic or college, is undoubted, and provides the official with experience which renders his advice to the heads of the schools he has to administer more acceptable than if he had been an assistant teacher only.

Valuable experience of school work prior to appointment as director has frequently been gained by inspectors of schools, who themselves are often appointed from among teachers of outstanding ability. This applies more to inspectors appointed by local education authorities. There seem to be but few instances of H.M. inspectors (usually referred to as Board of Education inspectors) leaving the civil service for local government service.

To sum up the matter of experience, the present trend of action of local education authorities seems to indicate that they expect directors to be men who have risen above their fellows in the education service, either as scholars, teachers or administrators—or in a combination of these capacities—and at the same time to possess those personal qualities that almost defy definition or description, but which are essential to success in administration.

A final word on personal qualifications might be added, for however high may be the academic distinctions of a director or however varied may have been his teaching experience, he will fail to be a successful officer unless he can gain the confidence of his committee and the teaching staff, and unless he possesses the faculty of administration.

The recent report to the M. of H. by the Departmental Committee on the qualifications, recruitment, training and promotion of local government officers (*q*) does not deal specifically with the appointment of a director of education, although evidence was submitted on behalf of the Association of Education Committees and the Association of Directors and Secretaries for Education. The general considerations and proposals of the committee do, however, bear upon the office of director of education.

The committee felt that all vacancies should be notified widely, except where it was intended to fill them by promotion from inside the office, and that the candidature of near relations of members or officers should be closely scrutinised; members, officers and candidates being required to disclose relationship. Naturally canvassing should invariably disqualify a candidate. It was also suggested that all newcomers to the service should be appointed on a term of probation, should be thoroughly tested and should be appointed to the established staff only if reports were satisfactory.

The committee also felt that university graduates should be systematically recruited by the larger local authorities and that there should be central machinery for the selection of this type of candidate. Competitive examination was recommended.

As regards the qualifications of chief officers, the committee

considered that no radical change in the existing system of requiring principal officers to possess technical qualifications was necessary, but that more attention should be paid to administrative ability and experience.

As a general conclusion, the committee felt that all questions affecting the recruitment, qualifications, training and promotion of officers should be assigned to a central committee in every local authority. [690]

**Rights and Duties.**—A director's rights are not always clearly stated in the terms of appointment, for some local education authorities carefully define the duties that their director is to perform and indicate what may and may not be done by him without reference to his committee or the chairman of his committee, while others merely give general directions.

But, primarily, a director's duty is to give effect to the decisions of his committee and carry out their policy. As their expert on education matters, he is their responsible adviser. From his knowledge of the educational needs not only of his area but of the country, he will advise on policy, formulating schemes for development and keeping a watchful eye on all circumstances and events that may affect educational policy. One of his most essential, and at the same time most difficult, duties is that of intelligent anticipation.

Advice on the need for new schools and the appointment of teachers and staff, will be given having regard to vital statistics, migration of population, the condition of local industries, combined with such economic factors as wages and employment, all of which affect the demand for educational facilities for both children and adults.

The care of schools and other buildings for which an education committee are responsible is a matter on which a director should keep his committee informed. It may be that the technical side of this subject is dealt with by an architect, but it is for the director to advise his committee, having regard to the architect's report on the details and cost of schemes.

One of the director's most important duties is that in connection with the supply of materials for use in schools and polytechnics, such as books, stationery, apparatus and equipment. In no branch is it more necessary to make arrangements that will ensure the purchase in the cheapest market of materials of a sufficiently good standard, and also to ensure economy of use. Some local education authorities prefer to purchase in bulk and themselves arrange for distribution, while others enter into contracts for the supply of goods direct to schools. Whichever method is adopted, there is always considerable scope for the economical administration of this part of the service, and for this the director is primarily responsible.

On matters relating to curriculum in elementary, secondary, technical, art and trade schools, the director should be the adviser of his committee, unless an inspector is appointed for this purpose.

Where reorganisation in accordance with the recommendations of the Hadow Report (<sup>r</sup>) has been carried out, it is of paramount importance that there shall be close co-operation and co-ordination among the contributory junior schools and the senior school to which they

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(r) Report of the Consultative Committee on "the Education of the Adolescent" (1927). Price 2s.

contribute. It would fall to the director to ensure that this essential contact was made and maintained.

The administration of education entails not only purely educational services, but may include such subsidiary ones as choice of employment and the administration of juvenile unemployment benefit to employment, school attendance, school medical service, libraries, agricultural education, and the administration of the Blind Persons Act, 1920 (s), all of which may come within the scope of the director's supervision. Other social services which have been developed in recent years include duties under the Children and Young Persons Act, 1933, and in many cases the duty of acting as guardian *ad litem* in proceedings under the Adoption of Children Act, 1926. See title **ADOPTION OF CHILDREN**.

Frequently such officers as an executive officer of the juvenile employment bureau, superintendent of school attendance, school medical officer, chief librarian and the organiser of agricultural education respectively are in charge of these departments, and this relieves the director of all but nominal responsibility.

The supervision of his own personal office staff necessitates the exercise of a keen judgment of character and ability. The expeditious dealing with correspondence, the preparation of reports, agenda, minutes of meetings, the maintenance of adequate statistics, the checking and keeping of accounts, the assessing of grants and awards are important matters of routine, many of which are delegated to executive officers such as the deputy director or clerks of ability.

From the summary given of a director's duties, it will be appreciated that a ready grasp of detail, with confidence in himself and his subordinates, are qualities that are essential. [691]

**Organisation of a Director's Office.**—An indication has already been given of the subsidiary officers that may be found on the staff of a director, but it is here proposed to deal with this subject in greater detail.

Even many of the smaller local education authorities now appoint a deputy director who, as a rule, possesses qualifications similar to those of the director. There have been instances where, in addition to a director, a secretary has been appointed, the former being responsible for the educational and the latter for the clerical side of the work. This practice is dying out, for, it is believed, its success has been questionable.

Large authorities sometimes appoint as many as three assistant education officers—for elementary, secondary and technical education respectively—the senior usually acting as deputy director in the absence of the director. Each one of these assistants will also assume charge of all those other officers and clerks who carry out duties coming within his division of the work. For example, the superintendent of school attendance, and the executive officer of the juvenile employment bureau, would both usually come under the control of the assistant education officer for elementary education.

The relations of the school medical officer, the architect, the accountant and the solicitor, with the director, will differ according to the general organisation of the whole of the council's staff. For instance, where a county council employ an architect, a medical officer, an accountant and a solicitor, the status of these chief officers is such

that where reports or advice from these officers are required by the education committee, the relation is one of co-operation. On the other hand, a school medical officer, an architect, a manager of works and a finance clerk are sometimes found on the staff of the director, and where this exists the relationship is obviously different.

It is not proposed to suggest any form of organisation of office staff, but it does seem that care in the selection of clerks and the inculcation of a sense of individual responsibility help to promote satisfaction and efficiency.

In recommending appointments to his staff, a director should bear in mind that a member of the council is disqualified from being appointed to any paid office (except that of chairman, mayor or sheriff) until twelve months after he has ceased to be a member of the council (*i*).

[692]

**Duty to Account.**—Any officer employed by a county, borough or district council must, when required by the council, give a true account in writing of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and supporting records (*u*). He must also, when required, give a list of the persons from whom or to whom money is due in connection with his office and show the amount due from or to each, and must pay all money due from him to the treasurer of the authority or otherwise, as the council may direct (*a*). [693]

**Appearance in Legal Proceedings.**—Sect. 145 of the Education Act, 1921 (*b*), provided that a local education authority might appear in legal proceedings by their clerk (*i.e.* the clerk of the council, not the director of education) or by some other member of the authority authorised by resolution of the authority. This did not cover a director of education, if it were desired that he should conduct a case on behalf of the education committee, but the section was repealed (except as to London) by the L.G.A., 1933, and the matter is now governed by sect. 277 of that Act (*c*).

This section provides that the council of a county, borough or district may by resolution authorise any member or officer of the council (which includes a director of education and his staff) either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction in any proceedings instituted by them, or on their behalf, or against them. When this authority has been given, the officer is entitled to institute or defend any proceedings and to conduct them, although he is not a certificated solicitor. [694]

**Compensation for Loss of Office.**—If, through the relinquishment of powers and duties (*d*) by a local education authority the office of director is abolished, he would be entitled to compensation for loss of office in accordance with the Education Act, 1921 (*e*). The compensation would be awarded under sect. 120 of the L.G.A., 1888 (*f*),

(*i*) L.G.A., 1933, s. 122; 26 Statutes 371.

(*u*) *Ibid.*, s. 120 (1); *ibid.*, 370.

(*a*) *Ibid.*, s. 120 (2).

(*b*) 7 Statutes 204.

(*c*) 26 Statutes 452.

(*d*) See s. 5 of the Education Act, 1921; 7 Statutes 133.

(*e*) S. 172, proviso (*c*) and r. 7 in Second Schedule; *ibid.*, 216, 219.

(*f*) 10 Statutes 767.

and would not exceed the amount which under the Acts and rules relating to the Civil Service was payable to a person on the abolition of his office.

Although sect. 120 of the Act of 1888 is repealed (except as to London) by the L.G.A., 1933, the application of the section is preserved by proviso (vi.) to sect. 307 (1) of that Act (g), which enacts that a repeal by that section shall not affect any title to compensation under an enactment so repealed. [695]

**Interest in Contracts, etc.**—Any officer of a public body, which includes a local education authority, who corruptly solicits or receives for himself or for any other person any gift, loan, fee, reward or advantage whatever as an inducement to, or reward for, or otherwise, on account of any member, officer or servant of a public body doing, or forbearing to do, anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned, is liable to prosecution for a misdemeanor (h). See also title CORRUPTION IN OFFICE.

An officer employed under any enactment by the council of a county, borough or district must give a written notice to the council, under sect. 123 of the L.G.A., 1933 (i), if it comes to his knowledge that a contract in which he has any direct or indirect pecuniary interest (not being a contract to which he himself is a party) has been or is proposed to be entered into by the council or any committee of the council. This section is more fully described in the title BOROUGH COUNCILLOR at pp. 179, 180 of Vol. II. [696]

(g) 26 Statutes 469.

(h) Public Bodies Corrupt Practices Act, 1889, s. 1; 4 Statutes 718.

(i) 26 Statutes 371.

## DISALLOWANCE

*See SURCHARGE.*

## DISCONTINUED GRANTS

*See GENERAL EXCHEQUER GRANTS.*

## DISCOUNT FOR RATES

| PAGE   |     | PAGE                            |     |
|--|-----|---------------------------------|-----|
| INTRODUCTORY - - - - -                       | 386 | INCIDENCE OF DISCOUNT - - - - - | 387 |
| POWER TO ALLOW DISCOUNT - - - - -            | 386 | DISCOUNT IN PRACTICE - - - - -  | 388 |
| ADVANTAGES TO THE RATING AUTHORITY - - - - - | 386 | LONDON - - - - -                | 389 |

*See also titles :*

RATE ACCOUNTS ;  
RATE COLLECTION ;  
RATE ESTIMATES ;

RATES AND RATING ;  
RATING OF OWNERS.

**Introductory.**—The allowance of a discount for prompt settlement of accounts is a device which has long been used and abused in trade and commerce, but it was not until 1925 that Parliament gave general authority for the application of the practice to the payment of local rates. Before that date, however, a number of local authorities had obtained powers by local Act to allow discounts, varying in amount from  $2\frac{1}{2}$  per cent. to 10 per cent., for the prompt payment of rates and gas, water or electricity charges. [697]

**Power to allow Discount.**—Sect. 8 of the R. & V.A., 1925 (*a*), authorises any rating authority (*b*) to pass a resolution directing that an allowance by way of discount not exceeding  $2\frac{1}{2}$  per cent. shall be made on the amount due in respect of any general rate from every person who pays the net amount due before such date as the rating authority prescribe. Any such allowance is to be made at the same rate to all persons entitled to it, but the allowance is not to be made to any person who is entitled to any of the owners' allowances provided for by sect. 11 of the Act (*c*). The rating authority may subsequently vary or revoke the resolution, but while it is in force a statement of its effect must be included in every demand note for general rate. By virtue of sect. 3 (2) of the Act (*d*), a similar resolution may be adopted by a R.D.C. as respects special rates.

But these provisions have not so far been adopted by councils in general. In the year 1933–34 it is believed that seventy-six urban rating authorities allowed a discount for prompt payment of rates ; in three county boroughs the allowance (under local Act) was 5 per cent., but in all other cases the allowance did not exceed  $2\frac{1}{2}$  per cent. [698]

**Advantages to the Rating Authority.**—The primary purpose of a discount allowance is to secure that the rating authority is provided with sufficient funds to finance the rate fund services and to meet

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(*a*) 14 Statutes 627.

(*b*) *I.e.* the council of every borough, urban or rural district (s. 1 (1) of R. & V.A., 1925 ; 14 Statutes 617).

(*c*) 14 Statutes 632. See as to these allowances the title RATING OF OWNERS.

(*d*) *Ibid.*, 622.

precepts, without incurring interest charges on bank overdraft. In some boroughs and districts the rates are paid promptly, but in general there is a natural inclination in the majority of ratepayers to defer payment until the rate period is well advanced, and a reminder has been sent to them. Earlier payment may be encouraged, perhaps, by improving the methods of collection, by arranging for payment by regular instalments, or by taking earlier proceedings, but no means is so powerful as the agency of discount. The course of rate collection may be so planned, with the aid of discount, as to provide funds just when they are required for meeting both normal expenditure and the calls of precepting authorities, thus avoiding recourse to bank overdraft, and possibly the necessity of maintaining a working balance. A discount allowance also reduces the work involved in collection as the ratepayer feels that he must pay within a certain limited time in order to secure the allowance. Consequently through the substitution of a centralised system of collection for outside collectors, a smaller staff suffices. Savings in the cost of stationery and postage also accrue. The number of cases in which legal proceedings have to be instituted for the recovery of rates is considerably less, and the collecting staff are able to concentrate their energies upon those ratepayers who have failed to take advantage of the discount allowance.

Possibly the only practical disadvantage to the rating authority, is that it is necessary to levy a higher rate poundage when a discount is allowed, *i.e.* the discount must be included in the produce of the rate before it can be taken off. The nominal rate poundage is therefore higher than the actual expenditure of the rating authority would justify, although savings in bank charges and collection costs, as mentioned, provide some set-off. Among the theoretical objections which have been raised to the principle of discount is the contention that as rates are legally due on demand and are recoverable by process after seven days from demand, a discount is unnecessary, and amounts perhaps to a tacit recognition of the habit of ratepayers to defer payment of rates until the latest possible date; but in fact, the statutory powers of recovery are in no way affected by the existence of a discount. Moreover, the practical impossibility of taking proceedings against all ratepayers who have not paid after seven days of demand involves the deferment of payment by some ratepayers. The discount, by diminishing the need for exercising such powers, secures greater uniformity of treatment. [699]

**Incidence of Discount.**—From the point of view of the ratepayers there can be no question that the operation of a discount allowance alters in some degree the incidence of the rate charge. If all ratepayers took advantage of the discount, each would pay approximately the same amount as if no discount were granted and the incidence would be unaltered. But they do not. The general body of ratepayers consists roughly of three classes, viz. those who meet their demands promptly in any case, those who pay only under pressure, and those who find difficulty in any circumstances in meeting the demand. The first class will of course take the discount allowance, the second (generally the largest) class will probably be induced to pay promptly under discount, but those in the third class will seldom be able to take advantage of it. The measure of benefit secured by the first two classes as a reward for prompt payment is more apparent than real, but it is gained in part, at least, at the expense of the third class of ratepayers, and this can be illustrated by a hypothetical example. If a rate of

9s. 10d. in the £ will suffice to meet the needs of a rating authority without allowing a discount, then, in order to allow a discount of  $2\frac{1}{2}$  per cent., it will be necessary to include in the rate poundage an additional sum of (say) 2d., thus increasing the rate poundage to 10s. It must be remembered that the amount added for discount will always be less than the amount of the actual deduction for discount, for two reasons ; (1) not all ratepayers will earn the discount, and (2) owners who are rated under sect. 11 of the Act of 1925 are debarred from receiving it. Instead of paying a rate in the £ of 9s. 10d. therefore, the more fortunate (or more thrifty) classes of ratepayers will pay a rate of 9s. 9d. in the £ (10s. less  $2\frac{1}{2}$  per cent.), but the remainder will pay a rate of 10s. in the £. The inflated rate of 10s. will also apply to small properties let on weekly tenancies in respect of which the owner is rated, and, if the owner receives an abatement under sect. 11 of 10 per cent., the allowance will be at the rate of 1s. in the £. (10 per cent. of 10s.) instead of 11·8d. in the £ (10 per cent. of 9s. 10d.). This allowance must be passed on to the tenant of property controlled by the Rent Restrictions Acts, as a result of the decision in *Nicholson v. Jackson* (e), and the net rate charge to the tenant is therefore 9s. instead of 8s. 10·2d., the increase being due to the discount allowance, which has no direct application to either tenant or owner.

Discount is clearly a benefit to those who take advantage of it, but it is a penalty on those who through circumstances or oversight do not pay their rates before the "discount date"; moreover, as shown by the hypothetical figures given above, the penalty may be double the amount of the benefit. The discount must be  $2\frac{1}{2}$  (or less) per cent. of the nominal amount of the rate, *not* at the rate of  $2\frac{1}{2}$  per cent. *per annum*, and, considered as a rate of interest, it undoubtedly represents a severe penalty. It subjects to an extra liability many tenants of compounded properties, and it also penalises occupiers who are only able to pay their rates by instalments throughout the rate period. There is, however, some set-off to this penalty in the saving of bank charges and collection costs reflected in the rate poundage and shared by this class equally with those whose prompt payment secures the saving. [700]

**Discount in Practice.**—It is desirable always to avoid increases in the rate poundage, and, as the introduction of a discount involves an increase, this should preferably take place when a reduction in the rate poundage would normally occur, e.g. just after a quinquennial valuation. The selection of the date by which payment is to be made in order to secure the allowance is a matter calling for careful consideration, in which regard should be had, on the one hand, to the dates when the rating authority are likely to need funds, e.g. to meet precepts, and, on the other hand, to past experience of rate collection, and, possibly, to the fact that under sect. 11 of the R. & V.A., 1925 (if in operation), the date by which owners must pay in order to secure their allowances cannot be earlier than half-way through the rate period (e.g. June 30 and December 31, when rates are levied half-yearly). The adoption of a single date, e.g. June 1 and December 1, will certainly lead to great congestion of work in the collection offices at and about discount dates. The acceptance of instalments at two dates, with a reduced allowance on the second date, e.g. allowing  $2\frac{1}{2}$  per cent. on payments before June 1, and  $1\frac{1}{2}$  per cent. on payment of balance before July 16, will go some way to meet possible hardships, but will create

administrative difficulties and entail additional clerical work. Probably the most satisfactory system from the administrative point of view is that whereby discount is allowed for payment within a fixed period (*e.g.* 21 or 28 days) from the date of delivery of the rate demand note. The delivery of demand notes may then be evenly spread over (say) the first two or three months of each rate period, thus ensuring a smooth progression of collection. But it is important that the issue of demand notes should follow the same cycle in each rate period, so that individual ratepayers are called upon to meet their demands at regular intervals. The rate and amount of the discount allowance must be clearly shown on the rate demand note, and it should be made perfectly clear that the discount will be allowed only if payment is made in full by the date stated. In no circumstances should any allowance of discount be made after the due date. No doubt cases will arise where failure to secure the discount is due to no fault of the rating authority or their officers, but although friction with a disappointed ratepayer may be unpleasant, the only fair and satisfactory rule is to regard the discount date as final in all circumstances. [701]

**London.**—The above-mentioned statutory provisions do not apply to London, and apart from the provisions of the Poor Rate Assessment and Collection Act, 1869 (f), relating to commission allowed to an owner who has become liable to pay rates under that Act (see title LONDON, RATING IN), there is no general statutory power to allow discounts for the prompt payment of rates in London. [702]

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(f) Ss. 3—5; 14 Statutes 546.

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## DISEASES

|  | PAGE |  | PAGE |
|--|------|--|------|
| PRELIMINARY OBSERVATIONS                 | 389  | CHRONIC DISEASE                          | 392  |
| DISEASES IN GENERAL                      | 390  | Tuberculosis                             | 392  |
| EPIDEMIC, ENDEMIC AND INFECTIOUS DISEASE | 390  | Venereal Diseases                        | 392  |
| ACUTE INFECTIOUS DISEASE                 | 391  | Cancer                                   | 392  |
| Notifiable                               | 391  | PREVENTION, TREATMENT AND ADMINISTRATION | 392  |
| Non-notifiable                           | 391  | LONDON                                   | 393  |

The following titles, except M. of H. and Welsh Board of Health, are referred to in the body of this article, but are listed here for convenience of reference :

AMBULANCES ; BACTERIOLOGICAL LABORATORIES ; BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN ; BLIND PERSONS ; CANCER ; CLINICS ; DISPENSARIES ; EDUCATION SPECIAL SERVICES ; HEALTH, MINISTRY OF ; HEALTH VISITORS ; HOSPITAL AUTHORITIES ; HOSPITAL SERVICES (LONDON) ; HOSPITALS ; INFANTS, CHILDREN AND YOUNG PERSONS ; INFECTIOUS DISEASES ; ISOLATION HOSPITALS ; MATERNITY AND CHILD WELFARE ; MEDICAL OFFICER OF HEALTH ; MENTAL DISORDER AND MENTAL DEFICIENCY ; MENTAL HOSPITALS ; MIDWIVES ; PREVENTION OF DISEASE ; PUBLIC ASSISTANCE ; PUBLIC HEALTH ; TUBERCULOSIS ; TUBERCULOSIS OFFICER ; VACCINATION ; VENEREAL DISEASES ; VOLUNTARY HOSPITALS AND INSTITUTIONS ; WELSH BOARD OF HEALTH ; WELSH NATIONAL MEMORIAL.

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**Preliminary Observations.**—The law and administrative practice in relation to the diseases which bulk largely in the operations of public health departments of local authorities are dealt with fully under specific titles (a list of which appears above) in other parts of this work.

A brief summary, however, of the responsibilities and interests of these departments in reference to disease in general may be useful. [703]

**Diseases in General.**—Local authorities are concerned with all forms of disease, since it is the duty of the M.O.H. under art. 14 (3) of the Sanitary Officers Order, 1926 (a), to report to the council and the M. of H. each year as to the vital statistics of the district. Their responsibility for treatment, also, may extend to all forms of disease, both in hospitals and at out-patient clinics or dispensaries, whether under the P.H.A. or the Poor Law Act, 1930 (b). See titles BACTERIOLOGICAL LABORATORIES; CLINICS; DISPENSARIES; HOSPITAL AUTHORITIES; HOSPITAL SERVICES (LONDON); HOSPITALS; ISOLATION HOSPITALS; MENTAL HOSPITALS; PUBLIC ASSISTANCE; VOLUNTARY HOSPITALS AND INSTITUTIONS; WELSH NATIONAL MEMORIAL.

For many years it was doubted whether the power of a sanitary authority under sect. 131 of the P.H.A., 1875 (c), to provide "hospitals or temporary places for the reception of the sick" allowed them to provide hospitals for the reception of patients who did not suffer from infectious disease. But in *Withington Local Board v. Manchester Corpns.* (d), CHITTY, J., expressed the view that the hospital to be provided under sect. 131 is for the sick, without any distinction as to the nature of the sickness, whether it be infectious or not, and this interpretation of the section is now generally adopted.

Subscriptions or donations to voluntary hospitals or institutions may be paid under sect. 64 of the P.H.A., 1925 (e), and sect. 66 of that Act (f) allows arrangements to be made with the consent of the M. of H. for the treatment of persons suffering from any disease of or injury to the eyes, either by a county council or a sanitary authority.

Further, the obligations of a council may extend to all diseases, in so far as they affect persons of restricted ages or conditions, under maternity and child welfare schemes, the care of the health of school children, or persons of unsound mind or mental defectives under their care and control. There is, in fact, no disease which may not fall within the province of modern public health administration. See titles BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN; BLIND PERSONS; EDUCATION SPECIAL SERVICES; INFANTS, CHILDREN AND YOUNG PERSONS; MATERNITY AND CHILD WELFARE; MENTAL DISORDER AND MENTAL DEFICIENCY; MIDWIVES; PREVENTION OF DISEASE; VACCINATION. [704]

**Epidemic, Endemic and Infectious Disease.**—This group includes most diseases with which public health departments are specially organised to deal. In connection with most of them local authorities have special powers and duties. They are, for the most part, infectious diseases, sometimes called communicable diseases, or diseases raising exceptional problems by their incidence or fatality among the people, or among sections of them. Detailed treatment of the law and administration affecting these classes of disease will be found under titles CANCER; INFECTIOUS DISEASES; TUBERCULOSIS and VENEREAL DISEASES.

The expression "infectious disease" is here used to include any disease which may be transmitted, directly or indirectly, not only

(a) S.R. & O., 1926, No. 552.

(b) 12 Statutes 968.

(c) 18 Statutes 678.

(d) [1893] 2 Ch. 19; 38 Digest 199, 346.

(e) 18 Statutes 1143.

(f) *Ibid.*, 1144.

from man to man, but also from animals to man. It must be remembered, however, that the term has a restricted meaning, by definition, in several Acts of Parliament and regulations, and that the widest of these is that contained in art. 2 (2) of the Port Sanitary Regulations, 1933 (g), where it means any epidemic or acute infectious disease, but does not include venereal disease. As the fact of notifiability and the legislative means by which diseases have become notifiable are related to the powers and duties of authorities, and as the acuteness or otherwise of the manifestations of disease have a bearing upon administration, it is convenient to classify them according to whether they are acute or chronic, notifiable or non-notifiable. Acute diseases are so called because they are usually of short duration in their effect upon a single individual; in chronic diseases the duration of illness is usually prolonged, although there may be acute phases and, in exceptional instances, the duration may be brief. [705]

**Acute Infectious Disease.** *Notifiable.*—The following diseases have been made notifiable by sect. 6 of the Infectious Disease (Notification) Act, 1889 (h), as extended to the whole of England and Wales by the Infectious Disease (Notification) Extension Act, 1899 (i), viz.: small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlet fever, typhus fever, typhoid fever, enteric fever, relapsing fever, continued fever and puerperal fever. As it is provided in sect. 6 of the Act of 1889 that a local authority (k) may, with the Minister's consent, add any other infectious disease to the list, in so far as their own district is concerned, any of the diseases described later as non-notifiable (*infra*) may be included locally as notifiable in this way. It should be noted that art. 1 of the P.H. (Infectious Diseases) Regulations, 1927 (l), defines enteric fever as including typhoid and paratyphoid fevers, and this is the significance usually attached to the expression "enteric fever" for all purposes, including notification.

The following diseases have been made notifiable by regulations of the Minister made under sect. 130 of the P.H.A., 1875 (m), as extended by the P.H.A., 1896 (n), viz.: plague, cerebro-spinal fever, acute poliomyelitis, acute encephalitis lethargica, acute polioencephalitis, puerperal pyrexia, ophthalmia neonatorum, malaria, dysentery, acute primary pneumonia and acute influenzal pneumonia. As the Minister's power relates to any epidemic, endemic or infectious disease, notification may be extended in this way to any of the diseases described as non-notifiable (*infra*); the use of the word "endemic" appears to permit of the inclusion of a disease not infectious in character, and the fact that puerperal pyrexia has been made notifiable appears to confirm this view, as this condition is not necessarily of infectious origin. [706]

*Non-notifiable.*—Any of these diseases may be made notifiable by either of the methods described in the previous paragraph (*ante*), and some of them have been so dealt with by the Minister or by different sanitary authorities (k) from time to time, either as a temporary or permanent measure. Notification may also be imposed by local Act. Such diseases include measles, German measles, whooping-cough, chicken-pox, mumps, diarrhoea, pemphigus neonatorum, acute rheumatism, yellow fever, influenza, the common cold, itch, pediculosis

(g) S.R. & O., 1933, No. 38.

(h) 18 Statutes 813.

(i) *Ibid.*, 879.

(k) I.e. the council of a borough or district, or a port sanitary authority.

(l) S.R. & O., 1927, No. 1004.

(m) 18 Statutes 678.

(n) *Ibid.*, 871.

and ringworm. In addition health departments are concerned with diseases usually acquired, directly or indirectly, by infection from lower animals, of which the most important in this country are food-poisoning, septic sore throat, undulant fever, anthrax, glanders, tetanus, rabies, actinomycosis, foot and mouth disease and psittacosis. An inspector under the Diseases of Animals Acts must report to the M.O.H. under art. 2 of the Animals (Notification of Disease) Order, 1919 (o), any case, or suspected case, of anthrax, glanders or farcy, or rabies in an animal notified to him. A similar notice must be given to the M. of H. in regard to any case or suspected case of foot and mouth disease under the Foot and Mouth Disease Order, 1928, art. 1 (3). [707]

**Chronic Disease.** *Tuberculosis.*—All forms of this disease in human beings are notifiable under the P.H. (Tuberculosis) Regulations, 1930 (p). [708]

**Venereal Diseases.**—Three diseases are included under this general designation, viz. syphilis, gonorrhœa and soft chancre. They are not generally notifiable, but a modified form of notification, affecting certain classes of persons, has been imposed by local Act (q). [709]

**Cancer.**—This is a general term applied to malignant tumours of a variety of types, of which carcinoma, epithelioma, endothelioma, rodent ulcer and sarcoma are the most common. They are not notifiable to the M.O.H., although certain forms of cancer must be notified to the Chief Inspector of Factories at the H.O. under a Factory and Work-shop Order of 1919 (r). [710]

**Prevention, Treatment and Administration.**—The administration of the law in relation to notification and the prevention of infectious disease devolves primarily upon sanitary authorities, but the district M.O.H. is obliged to transmit to the county medical officer certain particulars as to notifications received by him (see titles MEDICAL OFFICER OF HEALTH and TUBERCULOSIS). These authorities are also responsible for taking measures against the spread of infection, with the exception that the definitions of infectious disease, where they exist in public health law, would appear to exclude venereal disease from the purview of sanitary authorities (see title INFECTIOUS DISEASES). The powers of local authorities include the provision of hospitals under sect. 131 of the P.H.A., 1875 (s). For these purposes they may appoint staff, provide ambulances, acquire lands, etc. (see title HOSPITAL AUTHORITIES). County councils are empowered by the Isolation Hospitals Acts, 1893 (t) and 1901 (a), to provide or to set up hospital districts for the provision of hospitals for acute infectious disease, and this power has been widely exercised. Further, the P.H.

(o) S.R. & O., 1919, No. 219.

(p) S.R. & O., 1930, No. 572; 23 Statutes 446.

(q) See e.g. Bradford Corp. Act, 1925 (15 & 16 Geo. 5, c. cxxi.), s. 68 (1), under which a venereal disease becomes an infectious disease to which the Act of 1889 applies in the following cases : (a) any infant under two years of age suffering from any such disease ; (b) any person (not being a child) suffering from any such disease who after being informed by any medical practitioner attending on or called in to visit him or by the M.O.H. that further treatment is necessary in order to effect a cure, refuses or neglects to undergo further treatment. The right or duty of notification is limited to a medical practitioner, and the duration of the section was limited to five years unless continued by Act or provisional order, and apparently s. 68 has been allowed to lapse.

(r) S.R. & O., 1919, No. 1775.

(t) *Ibid.*, 862.

(s) 13 Statutes 678.

(a) *Ibid.*, 888.

(Prevention and Treatment of Disease) Act, 1913 (*b*), as extended by sect. 61 of the P.H.A., 1925 (*c*), and sect. 57 (2) of the L.G.A., 1929 (*d*), enables them to take over other functions relating to the prevention of infectious disease. County councils are also by sect. 63 of the L.G.A., 1929, under a duty to submit schemes to the M. of H. for ensuring that adequate provision for the treatment of infectious disease is made throughout the country.

The treatment of tuberculosis is administered mainly by county borough councils and county councils, being so authorised by sect. 3 of the P.H. (Prevention and Treatment of Disease) Act, 1913 (*e*), and the P.H. (Tuberculosis) Act, 1921 (*f*). For this purpose they may establish institutions, including dispensaries, sanatoria and hospitals and employ staff (see title TUBERCULOSIS).

The prevention and treatment of venereal disease are functions of the county borough and county councils under the P.H. (Venereal Diseases) Regulations, 1916 (*g*), every such council being required to make arrangements to the satisfaction of the M. of H. for the free examination of pathological specimens, the confidential diagnosis and treatment of patients in hospitals or other institutions, the free supply of arsenobenzene compounds to private practitioners and the dissemination of information as to venereal disease (see title VENEREAL DISEASES).

Certain officers employed in connection with tuberculosis and venereal disease schemes must hold qualifications prescribed by the L.G. (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*h*). See titles HEALTH VISITORS, TUBERCULOSIS OFFICER.

In addition to the power to provide treatment in hospitals or other institutions under sect. 131 of the P.H.A., 1875 (*i*), as extended to county councils by sect. 14 (1) of the L.G.A., 1929 (*k*), county councils and borough and district councils are empowered by sect. 67 of the P.H.A., 1925 (*l*), to arrange for the publication of information on questions relating to health or disease. (These powers are of special use in relation to cancer; see title CANCER.) [711]

**London.**—The statutory law in connection with diseases so far as concerns the administrative County of London is contained mainly in the P.H. (London) Act, 1891 (*m*). The sanitary authorities administering that Act are, in the City of London, the Common Council, and, elsewhere in the county, the metropolitan borough councils. As to the Public Health Department of the L.C.C., see titles PUBLIC HEALTH and HOSPITAL SERVICES (LONDON), and for details of specific diseases, see the titles relating thereto. [712]

(*b*) 13 Statutes 953.

(*d*) 10 Statutes 922.

(*f*) *Ibid.*, 971.

(*h*) S.R. & O., 1930, No. 69.

(*k*) 10 Statutes 891.

(*m*) 11 Statutes 1025.

(*c*) *Ibid.*, 1141.

(*e*) 13 Statutes 953.

(*g*) S.R. & O., 1916, No. 467.

(*i*) 13 Statutes 678.

(*l*) 13 Statutes 1145.

# DISEASES OF ANIMALS

| PAGE   | PAGE |  |     |
|--|------|--|-----|
| INTRODUCTORY - - - - -                                     | 394  | Glanders or Farcy - - - - -              | 405 |
| CENTRAL AND LOCAL AUTHORITIES                              | 395  | Parasitic Mange - - - - -                | 405 |
| INSPECTORS AND OFFICERS - - - - -                          | 397  | Rabies - - - - -                         | 405 |
| POLICE - - - - -   | 398  | Sheep-Pox - - - - -                      | 405 |
| FINANCE - - - - -  | 399  | Sheep-Scab - - - - -                     | 405 |
| GENERAL FUNCTIONS OF CENTRAL AUTHORITY - - - - -           | 400  | Swine Fever - - - - -                    | 406 |
| GENERAL FUNCTIONS OF LOCAL AUTHORITIES - - - - -           | 402  | Tuberculosis - - - - -                   | 406 |
| METHODS OF CONTROL BY ORDERS                               | 403  | IMPORTATION - - - - -                    | 407 |
| Anthrax - - - - -  | 403  | EXPORTATION OF HORSES - - - - -          | 409 |
| Cattle-Plague, Foot-and-Mouth Disease and Pleuro Pneumonia | 404  | COMPENSATION - - - - -                   | 409 |
| Epizootic Abortion - - - - -                               | 404  | M. of A. and F. - - - - -                | 409 |
| Epizootic Lymphangitis - - - - -                           | 404  | Local Authorities - - - - -              | 409 |
|  |      | OFFENCES AND LEGAL PROCEEDINGS - - - - - | 411 |
|  |      | LONDON - - - - -                         | 413 |

*See also titles :*

AGRICULTURAL COMMITTEES ;  
 AGRICULTURE AND FISHERIES,  
 MINISTRY OF ;  
 ANIMALS, KEEPING OF ;  
 COMMITTEES ;

DOGS ;  
 MARKETS AND FAIRS ;  
 MILK AND DAIRIES ;  
 SLAUGHTERHOUSES AND KNACKERS' YARDS.

## INTRODUCTORY

The principal statutes conferring powers in relation to diseases of animals are the Diseases of Animals Act, 1894, and the amending Acts of 1896, 1903, 1909, 1910, 1925 and 1927, the Poultry Act, 1911, the Exportation of Horses Act, 1914, the Importation of Animals Act, 1922 (Session 2), and the Importation of Pedigree Animals Act, 1925 (*a*). It will be convenient to refer to each of the Diseases of Animals Acts as the Act of 1894 or other year in which the Act was passed.

The amending Acts of 1896, 1903, 1909 and 1910, and the Importation of Pedigree Animals Act, 1925, are all to be construed as one with the Act of 1894, with the result that references in that Act to the Diseases of Animals Act, 1894, cover a reference to the later Acts.  
**[718]**

The diseases to which the Act of 1894 applied originally were cattle-plague, pleuro-pneumonia, foot-and-mouth disease, sheep-pox, sheep-scab, and swine-fever (*b*) ; but under sect. 22 (xxxv.) of the Act of 1894 (*c*), the M. of A. & F. may by order bring other diseases within the Act. The following additional diseases now come within the scope of the Act of 1894 and amending Acts : anthrax, epizootic abortion,

(*a*) See 1 Statutes 389 *et seq.* All these Acts may be cited together as the Diseases of Animals Acts, 1894 to 1927 (s. 6 of Act of 1927).

(*b*) See definition of "disease" in s. 59 (1) of the Act of 1894 ; 1 Statutes 420.

(*c*) 1 Statutes 402.

epizootic lymphangitis, glanders, parasitic mange, rabies and tuberculosis (*d*).

The term " animals " is defined in sect. 59 (1) of the Act of 1894 as meaning cattle, sheep and goats, and all other ruminating animals and swine. By sect. 22 (xxxvi.) of the Act of 1894, this definition may be extended by order of the M. of A. & F. so as to include any kind of four-footed beasts ; horses, asses, mules, dogs and cats have been added by various orders of the Minister (*e*). Poultry (including domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons) are brought within the Act of 1894 for the purpose of the making of orders for preventing unnecessary suffering whilst they are being conveyed by land or water, or exposed for sale or during disposal after sale, and for requiring the cleansing or disinfection of receptacles or vehicles used for the conveyance of live poultry.

The objects of the group of statutes under consideration include :

- (1) the prevention of the above-named contagious diseases, and, where possible their eradication ;
- (2) the control of outbreaks of disease ;
- (3) the prevention of the introduction of disease from outside Great Britain ;
- (4) the protection of animals against unnecessary suffering.

[714]

#### CENTRAL AND LOCAL AUTHORITIES

The central authority charged with the administration of the Diseases of Animals Acts is the Minister of Agriculture and Fisheries (*f*).

By sect. 3 of the Act of 1894 (*g*), the local authorities are : (A) the borough council of each borough which, according to the census of 1881, contained a population of 10,000 or over ; (B) elsewhere (outside the county of London) the county council ; (C) in the city of London, the common council ; and the common council is also the local authority for the provisions relating to imported animals in and for the whole of the county of London ; (D) in the county of London, exclusive of the city, the L.C.C. (except for the provisions relating to imported animals).

When a new borough is constituted, the scheme of the Privy Council usually provides whether the council are to be the local authority for the purposes of the Diseases of Animals Acts. No doubt where the council of a borough are the local authority and the borough is extended, the council become the authority for the extended borough. But if a borough is extended and immediately prior to extension the borough forms part of the area for which the county council act as the local authority, it is questionable whether the borough council become the

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(*d*) The following diseases are considered to have been eradicated in Great Britain in the years stated in brackets : Cattle-plague (1877), pleuro-pneumonia (1898), sheep-pox (1850), rabies (1922), epizootic lymphangitis (1906), and glanders (including farcy) 1928. The Diseases of Animals Acts and orders in relation to these diseases are directed towards (1) the prevention of re-introduction from abroad, and (2) the prevention of the spread of disease in the event of re-introduction. Dourine has never existed in Great Britain.

(*e*) The Anthrax Order of 1928, includes in the definition of " animal," any four-footed mammal kept in captivity except mammals in certain pathological institutes ; and see Importation of Dogs and Cats Order, 1928 (S.R. & O., 1928, No. 922), for inclusion of canine and feline animals.

(*f*) Act of 1894, s. 1 ; 1 Statutes 389 ; and s. 1 of the M. of A. & F. Act, 1919 (3 Statutes 451), by which the title of the Board of Agriculture and Fisheries was changed to " the Minister of Agriculture and Fisheries."

(*g*) 1 Statutes 392.

local authority, even if it could be shown that the area of the extended borough must have had a population of 10,000 or upwards at the census of 1881. Since the Act of 1894 extends to boroughs on the basis of a census now long out of date it is desirable that an express provision should be included in the local Act or order extending the borough, if it should be intended that the borough council should become the local authority under the Diseases of Animals Acts. [715]

By sect. 31 of and the Fourth Schedule to the Act of 1894 (*h*), each local authority was required to establish a committee or committees, to whom they might delegate all or any of their powers, except the power of making a rate, and except also any powers the delegation of which is prohibited by order of the M. of A. & F. The committee may consist partly of members of the local authority and partly of rated occupiers in their district, or other qualified persons. A local authority may appoint one committee as their executive committee, and in such case all the powers of the local authority, except the power of making a rate, are vested in the executive committee. The executive committee may appoint sub-committees, and may delegate powers to such sub-committees, excepting powers the delegation whereof is prohibited by order of the Minister.

It was decided in the case of *Huth v. Clarke* (*i*), that an executive committee of a county council were entitled to exercise a power as to the diseases of animals which had been delegated to a sub-committee. For a fuller reference to the facts of the case, see the title COMMITTEES at p. 273 of Vol. III. [716]

Where an agricultural committee is appointed under sect. 7 of the M. of A. & F. Act, 1919 (*i.e.*, in all administrative counties, except London, and in such county boroughs as desire to form an agricultural committee) that committee must appoint a diseases of animals sub-committee, and this sub-committee act as the executive committee appointed under the Act of 1894 (*k*). The appointment and membership of this sub-committee is regulated by the scheme constituting the agricultural committee, and the members may include persons who are not members of the appointing council, or who are not members of the agricultural committee. The scheme constituting the agricultural committee will provide that not more than one-third of the members of the statutory diseases of animals sub-committee shall be appointed by the M. of A. & F. (*l*). It appears not to be the practice of the Minister to claim the power of appointing members of minor sub-committees set up by the diseases of animals sub-committee.

Provision for detached parts of counties and boroughs and other anomalous areas is made by sect. 39 of the Act of 1894 (*m*). Where the whole or part of the district of a local authority is wholly surrounded by, or has a common boundary with the district of another authority, the authorities may agree for the exercise by one of them of powers under the Diseases of Animals Acts and orders (except the power of raising a rate), in the district, or part of the district, of the other authority. The agreement must provide for the ascertainment of the proportion of the expenses of the administering authority to be paid by the surrendering authority, and, except where a borough authority are involved, this apportionment of expenses is to be on the basis of the rateable value of the surrendered area administered as compared with

(*h*) 1 Statutes 406, 423. (*i*) (1890), 25 Q. B. D. 391; 33 Digest 17, 68.

(*k*) M. of A. & F. Act, 1919, s. 8 (2); 3 Statutes 454.

(*l*) *Ibid.*, s. 7 (4).

(*m*) 1 Statutes 409.

the rateable value of the original area of the administering authority. Sect. 39 also empowers two or more local authorities to agree to appoint a joint committee (*n*) to administer a district comprising the whole, or parts, of the constituent local authorities' districts ; the expenses of the joint committee are apportioned among the constituent local authorities on a basis of rateable value. The powers assigned to a joint committee cannot include the power of making a rate. [717]

Where one or more of the parties to an agreement for the constitution of a joint committee is a county council, appropriate provision should be made in the schemes under sect. 7 of the M. of A. & F. Act, 1919, constituting the respective county agricultural committees ; if two or more county councils are involved, the schemes may conveniently constitute a joint agricultural committee for the purposes of the Diseases of Animals Acts, and of the Destructive Insects and Pests Acts, 1877 to 1927, consisting of the several agricultural committees, and delegate to the joint committee the duty of appointing a diseases of animals sub-committee to act for the combined area.

Agreements under sect. 39 are not valid unless approved by the Minister, and as a matter of practice it is advisable to submit an agreement, in draft, to the Ministry before negotiations between the local authorities concerned are concluded. [718]

#### INSPECTORS AND OFFICERS

The M. of A. & F. appoints veterinary and other inspectors to carry out the administrative duties required by the Diseases of Animals Acts and orders, in so far as such duties are not executed by local authorities, and these officers are in close contact with and co-operate with local authorities and their officers.

Each local authority must appoint at least one veterinary inspector, and must appoint such additional veterinary inspectors as the Minister directs having regard to the extent and circumstances of the district (*o*). A veterinary inspector must be a member of the Royal College of Veterinary Surgeons, or must be a veterinary practitioner qualified as approved by the Minister (*p*).

A veterinary or other inspector need not be a whole-time officer of the council, or if he is a whole-time officer, need not devote the whole of his time to duties under the Diseases of Animals Acts. In appointing either class of inspectors, the council should bear in mind the importance of dealing with outbreaks or suspected outbreaks of disease without delay, and where an officer performs duties other than diseases of animals duties, should make such arrangements as will enable the officer to deal at once with urgent diseases of animals work. In the case of inspectors (not being veterinary inspectors) their stations and duties should be so arranged that they are reasonably accessible to persons who require movement licences for animals. In administrative counties a useful and usual practice is to appoint either selected police officers, or all police officers, as inspectors (*q*). The remuneration of inspectors

(*n*) Ss. 91, 93 of the L.G.A., 1933 (26 Statutes 355, 356), which relate to joint committees, do not apply to joint committees appointed under the Diseases of Animals Acts, but ss. 94, 95 and 96 (Disqualification for membership, disability for voting and standing orders) do apply to joint committees for Diseases of Animals.

(*o*) Act of 1894, s. 35 (2) ; 1 Statutes 408.

(*p*) *Ibid.*, s. 59 (1), definition of "veterinary inspector" ; 1 Statutes 421.

(*q*) The consent of the standing joint committee should be obtained. The usual practice is to require a payment to be made from the diseases of animals account to the police account in respect of services outside ordinary police duties.

and other officers appointed by local authorities is payable by the local authority.

A veterinary or other inspector, whether appointed by the M. of A. & F. or by a local authority, has, for the purposes of the Diseases of Animals Acts, all the powers of a police constable, in the place where the inspector is acting (see "Police," *infra*). He may at any time enter any land or shed to which the Acts apply, and may enter any building or place wherein he has reasonable grounds for supposing that disease exists, or has within 56 days existed, or that a carcase of a diseased or suspected animal may be found, or has been disposed of, or that the Acts, orders, or regulations have not been complied with (*r*). He may also enter any pen, vehicle, vessel or boat, if he has reasonable grounds for suspecting an offence. An inspector entering as aforesaid must, on the request of the owner, occupier, or person in charge of the land, etc., state in writing his reasons for entering (*s*). [719]

An inspector of the Minister may be given powers throughout England, and has certain additional powers of entry in dealing with pleuro-pneumonia, foot-and-mouth disease, and swine-fever (*t*).

An inspector of a local authority may be removed by the M. of A. & F. if on inquiry the Minister is satisfied that the inspector is incompetent, or has been guilty of misconduct or neglect (*u*).

Inspectors and officers of local authorities must send to the Ministry such notices, reports, returns and information as the Ministry require (*a*).

As to certificates by veterinary inspectors and the obstruction of inspectors of the Ministry and of local authorities, see OFFENCES AND LEGAL PROCEEDINGS at pp. 411, 412, *infra*.

A local authority are not liable for the negligence of their inspector in performing duties imposed on the inspector by an order of the Minister or by statute (*b*). But a local authority might possibly be liable in damages for the negligence of an inspector in exercising a power or duty imposed on the local authority, and delegated by them to an inspector (*c*). [720]

#### POLICE.

The police force of each area are required to execute and enforce the Diseases of Animals Acts and orders, and in addition to his general powers as a constable, a police officer may stop and detain without warrant, a person found committing, or reasonably suspected of being engaged in committing an offence against the Act (*d*). If the name and address are not known to the constable, and the person fails to give them to the satisfaction of the constable, the person may be apprehended forthwith. A person so apprehended must be taken with all practicable speed before a justice, but may be released on recognisance (*e*). A constable may also stop, detain and examine any animal, vehicle, etc., and may require it to be taken back to any place from which

(*r*) Act of 1894, s. 44 (1); 1 Statutes 413.

(*s*) *Ibid.*, s. 44 (2)–(4).

(*t*) *Ibid.*, s. 44 (6).

(*u*) *Ibid.*, s. 38 (3).

(*a*) *Ibid.*, s. 36.

(*b*) *Stanbury v. Exeter Corpns.*, [1905] 2 K. B. 838; 34 Digest 39, 156.

(*c*) See observations of Lord ALVERSTONE, L.C.J., in *Stanbury v. Exeter Corpns.* (*supra*). In *Fisher v. Oldham Corpns.*, [1930] 2 K. B. 364 (Digest Supp.), a corpns. were held not liable for a tortious act of a police officer, but in *Ormerod v. Rochdale Corpns.* (1898), 62 J. P. 153 (25 Digest 113, 362), the corpns. were held liable for the wrongful act of an assistant inspector.

(*d*) Act of 1894, s. 43 (1), (2); 1 Statutes 412.

(*e*) *Ibid.*, s. 43 (4).

it has been unlawfully moved (*f*). Any action under the foregoing heads, and any proceedings consequent thereon, must be reported in writing by the constable to his superior officer (*g*).

As to obstruction, see OFFENCES AND LEGAL PROCEEDINGS, *infra*.

The foregoing powers are exercisable by an inspector of the M. of A. & F. or of a local authority; see sect. 44 (1) of the Act of 1894 (*h*).

Any constable (whether or not he is appointed an inspector of the local authority) may receive notice of disease, and must forthwith give information thereof to such person or authority as the M. of A. & F. directs (*i*). Directions on this point are also contained in the principal orders relating to the several notifiable diseases. [721]

#### FINANCE

The financial arrangements of the M. of A. & F., including the operation of the Cattle Pleuro-Pneumonia Account for Great Britain (as to which see sect. 18 and Second Schedule to the Act of 1894 (*k*), as repealed in part by sect. 137 of the L.G.A., 1929 (*l*)), do not affect local authorities.

The expenses of a local authority in relation to diseases of animals are payable in a borough out of the general rate fund of the borough (*m*): in counties, the expenses of the county council in relation to these Acts are payable out of the county fund, and are chargeable as expenses for general county purposes, or as expenses for special county purposes on so much of the administrative county as forms the district of the county council for diseases of animals purposes (*n*). Sect. 40 of the Act of 1894 (*o*), which dealt with expenses of local authorities is repealed, save as regards London (*p*).

Where the amount of the local rate required for the purposes of the Acts would exceed in any financial year sixpence in the pound, the local authority may borrow (*q*). [722]

If, in accordance with any order of the M. of A. & F., a local authority slaughter cattle suspected of, or affected with, tuberculosis, they are to be repaid by the Minister under sect. 1 of the Act of 1925 (*r*), three-fourths of the amount of compensation paid by them to the owner of the cattle, and money so repaid is to be carried to the credit of the rate out of which the compensation was paid. Sums received by the local authority in respect of the sale of the carcase are not to be deducted in computing the compensation and repayment.

Where a carcase of an animal is washed ashore and buried or destroyed by the receiver of wreck, with the authority of the Board of

(*f*) Act of 1894, s. 43 (2); 1 Statutes 412.

(*g*) *Ibid.*, s. 43 (6).

(*h*) 1 Statutes 413.

(*i*) Act of 1894, s. 4; 1 Statutes 393.

(*k*) 1 Statutes 397, 422.

(*l*) 10 Statutes 974.

(*m*) L.G.A., 1933, s. 185 (1); 26 Statutes 407.

(*n*) *Ibid.*, ss. 180—183; *ibid.*, 404—406.

(*o*) 1 Statutes 411.

(*p*) By L.G.A., 1933, s. 307 and Eleventh Schedule. S. 41 of the Act of 1894, exempting certain non-county boroughs, remains in force, but should not now be required.

(*q*) Act of 1894, s. 42 (1 Statutes 411), as in part repealed by L.G.A., 1933, s. 307 and Eleventh Schedule.

(*r*) 1 Statutes 438.

Trade, the receiver may recover the expenses from the local authority (*s*). An authority may recover from the owner of a vessel their expenses (including expenses repaid to the receiver of wreck) of burying or destroying carcases of animals washed or thrown from the vessel (*t*). [723]

No stamp duty, fee, or other charge, is to be taken or made for any appointment, certificate, declaration, licence or other document under the Diseases of Animals Acts, or for any inspection or other act precedent to the granting of such a document (*u*). Certain fees may, however, be taken by the M. of A. & F. in respect of the landing of imported animals (*a*), and in respect of animals detained at a landing place, and tested for disease by an inspector of the Minister or of a local authority (*b*). Fees are also to be taken by the Ministry in respect of the inspection of horses intended for export (*c*). [724]

#### GENERAL FUNCTIONS OF CENTRAL AUTHORITY.

The Diseases of Animals Act, 1894, as amended by later Acts and particularly by the Act of 1927, which simplified the provisions as to infected areas and infected places, vests the following specific powers and duties in the M. of A. & F. (*d*) :

- (1) The duty to slaughter animals affected with cattle-plague or pleuro-pneumonia and power to slaughter contact animals (*e*). [725]
- (2) The power to make, vary and discontinue orders declaring places and areas to be infected with disease, and declaring the effect and consequences of such orders (*f*). [726]
- (3) The power to slaughter animals affected with foot-and-mouth disease or swine-fever, and suspected or contact animals (*g*). [727]
- (4) The power to make orders directing or authorising the slaughter of animals by local authorities in the case of the existence or suspected existence of disease other than cattle-plague (*h*). [728]
- (5) The power to reserve animals liable to be slaughtered for observation and treatment (*i*). [729]
- (6) The power to make provision for dealing with animals affected with pleuro-pneumonia or foot-and-mouth disease, and possible contacts in markets, in transit, on common land, and generally when not in a place under the control of the owner of the animals (*k*). [730]

(*s*) Act of 1894, s. 46 (1); 1 Statutes 414.

(*t*) *Ibid.*, s. 46 (2). "Carcases" includes carcases of frozen meat, free from disease, washed up from a wreck; *The Suezic* (1908), 72 J. P. 407; 2 Digest 301, 698. Recovery is by action as for the recovery of salvage in the Admiralty Division, or in a county court having Admiralty jurisdiction. *Ibid.*, s. 46 (2).

(*u*) Act of 1894, s. 47; 1 Statutes 414.

(*a*) Importation of Animals Act, 1922 (Session 2), s. 6; 1 Statutes 433.

(*b*) Act of 1927, s. 4; 1 Statutes 440.

(*c*) Act of 1910, s. 7; 1 Statutes 428.

(*d*) Compensation for slaughtered animals, etc., is dealt with under the heading "Compensation," *infra*.

(*e*) Act of 1894, ss. 7, 14, as amended by the Act of 1927; 1 Statutes 393, 395, 439.

(*f*) *Ibid.*, s. 10, as amended by the Act of 1927; *ibid.*, 394, 439.

(*g*) *Ibid.*, ss. 15, 16; *ibid.*, 396.

(*h*) *Ibid.*, s. 19; *ibid.*, 398.

(*i*) *Ibid.*, s. 20; *ibid.*, 398.

(*k*) *Ibid.*, s. 21; *ibid.*, 399.

In addition to acting under the foregoing special powers, the Minister is authorised by sect. 22 of the Act of 1894 (*l*), as amended by sect. 1 of the Act of 1903 (*m*), and in relation to poultry by sect. 1 of the Poultry Act, 1911 (*n*), to make orders for nearly forty different purposes. These purposes are set out in sect. 22 of the Act of 1894 (printed as amended at 1 Statutes 400—402) and it is unnecessary to repeat them here. It may be mentioned, however, that the purpose last mentioned in the section is particularly wide and authorises orders generally for the execution of the Act of 1894, or for the purpose of in any manner preventing the spread of disease.

Sect. 22 was also extended to allow orders with respect to dogs by sect. 2 of the Dogs Act, 1906 (*o*).

Orders have often to be made in circumstances of urgency and these orders were exempted from sect. 1 of the Rules Publication Act, 1893 (*p*), by sub-sect. (4) of that section. [731]

In relation to live poultry, sect. 1 of the Poultry Act, 1911 (*q*), includes among the purposes for which orders may be made by the Minister under sect. 22 of the Act of 1894 (*r*) :

- (1) for protecting live poultry from unnecessary suffering while being conveyed by land or water and in connection with their exposure for sale and their disposal after sale ;
- (2) for requiring the cleansing or disinfection of receptacles or vehicles used for the conveyance of live poultry.

A list of the general orders in force under the Diseases of Animals Acts will be found on pp. 389—392 of 1 Statutes.

The M. of A. & F. is further empowered to prohibit the importation of animals, carcases, fodder and other things (*s*), to require imported animals to be kept in quarantine (*t*), to require the slaughter of imported animals at the place of landing in certain cases (*u*), and for regulating ports for the landing of foreign animals (*a*). For provisions as to importation of Canadian and Irish cattle, see "Importation," *post*.

If a local authority fail to execute or enforce any of the provisions of the Diseases of Animals Acts or orders, the M. of A. & F. may empower a person to execute or enforce the powers ; and the expenses of so doing are recoverable from the local authority, and an order of the Minister is conclusive in respect of any default, amount of expenses, or other matter appearing therein (*b*). [732]

(*l*) 1 Statutes 400.

(*m*) *Ibid.*, 424.

(*n*) *Ibid.*, 428.

(*o*) *Ibid.*, 351.

(*p*) 18 Statutes 1016.

(*q*) 1 Statutes 428. Poultry is defined as including domestic fowls, turkeys, geese, ducks, guinea-fowls, and pigeons. (Poultry Act, 1911, s. 1 (3)). The Diseases of Animals Acts give no powers in relation to specific diseases in poultry ; the powers of extension in Diseases of Animals Act, 1894, s. 22 (xxxv.) and (xxxvi.), apply to four-footed beasts, and so do not enable the Acts to be extended to include birds.

(*r*) 1 Statutes 400.

(*s*) Act of 1894, s. 25 ; 1 Statutes 404.

(*t*) *Ibid.*, s. 27 ; *ibid.*, 404.

(*u*) Act of 1896, s. 1 ; 1 Statutes 424 ; and Act of 1894, Sched. III. ; 1 Statutes 423.

(*a*) Act of 1894, s. 30 ; 1 Statutes 405. See also s. 30 (3), for the power of the Minister to constitute a local authority for a port or part of a port.

(*b*) Act of 1894, s. 34 ; 1 Statutes 408.

### GENERAL FUNCTIONS OF LOCAL AUTHORITIES

The powers of local authorities are either conferred directly by statute, or are derived from orders made by the M. of A. & F. The principal direct powers are to provide wharves, stations, lairs, sheds and other places for the landing, reception, keeping, sale, slaughter or disposal of imported or other animals, carcasses, fodder, litter, dung, and other things (c). The Markets and Fairs Clauses Act, 1847 (d), is incorporated with the Act of 1894 by sect. 32 (2) of the Act of 1894, and a wharf or other place provided as above is a market within the meaning of the Act of 1847; and bye-laws relating to the place so provided may be approved by the M. of A. & F. without compliance with the procedure as to bye-laws contained in the Act of 1847. Charges as set out in the bye-laws may be made for the use of a wharf or other place, and money so received is to be carried to a separate account and applied, first, to repayment of money borrowed for the purposes of the Diseases of Animals Acts, and payment of interest thereon; and, secondly, towards the expenses of the local authority in executing the Diseases of Animals Acts (e). The local authority must make returns to the M. of A. & F. of expenditure and receipts under this section, and the Minister may require them to submit for approval a new schedule of tolls, if it appears on inquiry that the tolls should be reduced; and in default, the Minister may prescribe a new schedule of tolls (f). In requiring a reduction of tolls the Minister must have regard to the expenditure and receipts of the local authority in respect of the place provided, and to the money secured on the tolls, and to any other circumstances. [738]

By sect. 33 of the Act of 1894 (g), local authorities are empowered to purchase, or, by agreement, to hire land within or without their districts for the purposes already mentioned of sect. 32, or for the burial of carcasses in cases where the owner of the carcase has not suitable land available, or for any other purposes of the Diseases of Animals Acts (h). The disposal of land acquired for the purposes of the Diseases of Animals Acts is governed by sects. 164—166 of the L.G.A., 1933 (i).

By para. (xxxiv.) of sect. 22 of the Act of 1894 (k) an order of the M. of A. & F. may authorise a local authority to make regulations for any purpose of the Act or of an order of the Minister, subject to any conditions prescribed by him for securing uniformity and the due execution of the Act.

These regulations supplement the orders of the Minister, and they are governed by general provisions included in sect. 8 of the Animals (Miscellaneous Provisions) Order, 1927 (l). The regulations must be advertised by the authority, who may revoke or alter them without departmental approval, unless the original regulations were confirmed

(c) Act of 1894, s. 32 (1); 1 Statutes 406.

(d) 11 Statutes 452; except ss. 6—9 and ss. 51—60.

(e) Act of 1894, s. 32 (4), (5); 1 Statutes 407. *Sembly*, this provision does not govern the application of tolls taken in a market held under charter or established otherwise than under the Diseases of Animals Acts.

(f) Act of 1894, s. 32 (6), (7); 1 Statutes 407.

(g) *Ibid.*, 407.

(h) A county council, or a borough council, may be authorised by provisional order to purchase land compulsorily for the purposes of the Diseases of Animals Acts: *vide* ss. 159, 160 (1) (b) of the L.G.A., 1933; 26 Statutes 392.

(i) 26 Statutes 397.

(k) 1 Statutes 402.

(l) S.R. & O., 1927, No. 290.

by the Minister. If the regulations affect the movement of animals, two copies must be sent to each railway company having a station in the district of the authority and to the Railway Clearing House.

It is advisable to submit a draft of regulations to the Ministry before they are made by the local authority.

The powers of local authorities and of their officers are exercisable only within their districts, save where otherwise expressed in the Diseases of Animals Acts (*m*).

As to transfers of local authority powers, see "Central and Local Authorities," *ante*, and as to the appointment of officers by local authorities, see "Inspectors and Officers," *ante*.

For borrowing powers, see "Finance," *ante*.

The powers of local authorities in relation to authorised markets for imported cattle are dealt with under "Methods of Control by Orders," *post*. [734]

#### METHODS OF CONTROL BY ORDERS

The practical administration of the Diseases of Animals Acts is largely carried out by means of general orders of the M. of A. & F., supplemented by special orders of a more temporary nature designed to deal with specific outbreaks of disease, or with areas wherein the risk of outbreaks is unusually high. The orders are frequently revised and amended, and reference should be made to the Diseases of Animals Handbook (*n*) for the text of the general orders in force, and to the *London Gazette* for the more temporary orders (e.g. orders declaring infected areas).

The basis of control is the obligation imposed by sect. 4 of the Act of 1894 (*o*), on every person having in his possession or under his charge, an animal affected with a disease to which the Diseases of Animals Acts and orders apply, to keep the animal separate from animals not so affected, and to notify the case with all practicable speed to a police constable. In the cases of the principal diseases, this obligation extends to "suspected" animals.

Sect. 1 of the Diseases of Animals Act, 1909 (*p*), requires local authorities to pay a fee not exceeding 2s. 6d. for each notification of disease received by one of their officers from a veterinary practitioner, where the notification is made in pursuance of an order under the Diseases of Animals Acts (*q*). [735]

The scope of the principal disease orders, dealing with actual or suspected outbreaks of disease, is indicated in the following summary:

*The Anthrax Order*, 1928 (*r*), provides for notice of actual or suspected cases of disease to the local authority, and to the M.O.H. of the sanitary district concerned. The order prescribes the precautions to be taken, provides for the declaration of an infected place, and for

(*m*) Act of 1894, s. 38; 1 Statutes 409.

(*n*) Compiled by the M. of A. & F. and published by H.M. Stationery Office, Kingsway, London, W.C.2. Supplementary insets are issued at irregular intervals.

(*o*) 1 Statutes 393.

(*p*) *Ibid.* 425.

(*q*) The Animals (Notification of Disease) Order, 1919 (S.R. & O., 1919, No. 219), requires notification and payment of a fee of 2s. 6d. in cases of cattle-plague, pleuro-pneumonia, foot-and-mouth disease, sheep-pox, sheep-scab, swine-fever, anthrax, epizootic lymphangitis, rabies, glanders and farcy, and sarcoptic and psoroptic mange of horses. Tuberculosis in cattle is added by the Tuberculosis Order, 1925 (S.R. & O., 1925, No. 681).

(*r*) S.R. & O., 1928, No. 656.

inquiry by the local authority with the assistance of a veterinary inspector; rules to be observed in the infected place, and for the disposal of carcases, are set out. The obligation to dispose of diseased or infected carcases rests on the local authority, and, in practice, it is often convenient and economical to arrange for the owner of the animal to cremate or bury the carcase under police and veterinary supervision, on repayment by the local authority of the cost of labour and materials. The order also provides for cleansing and disinfection of premises, and prohibits the exposure for sale, or movement, of diseased or suspected animals or carcases. As anthrax is communicable to human beings, stringent rules are included as to the handling and cutting of carcases.

[736]

*The Cattle-Plague Order, 1928, the Foot-and-Mouth Disease Order, 1928, and the Pleuro-Pneumonia Order, 1928 (s),* are substantially alike in their provisions. Outbreaks of these diseases are dealt with by the M. of A. & F., and the most important duties of local authorities under these orders are performed immediately on notification of a suspected outbreak, when the local authority's inspector who receives notice of the case must at once serve a notice in the form in the First Schedule to the order, declaring an infected place and imposing restrictions thereon, and must inform the Ministry of the case by telegram. The local authority proceeds in the meantime with a veterinary inquiry, and if the veterinary inspector is of the opinion that there are reasonable grounds for suspecting disease, he must sign a certificate to that effect and thereupon a standstill order for cattle (and all other ruminating animals and swine in the case of cattle-plague and foot-and-mouth disease) comes into force at once within a radius of five miles of the suspected outbreak. The inspector must give notice of the signing of the certificate to the chief constable of any police area affected, to the station-master of the railway station nearest to the outbreak, and to the clerk of each local authority affected. The restrictions imposed in consequence of this certificate remain in force for two clear days, excluding the day of signing. Any subsequent action is taken by the M. of A. & F.

The duties imposed on local authorities by the Foot-and-Mouth Disease (Infected Areas Restrictions) Order, 1925 (t), and the amending orders of 1928 (u) and 1929 (a), relate mainly to the licensing and supervision of sales of animals in the infected area, the licensing of movements of animals into or within the area, and the enforcement of the order within the infected area to which the general order is applied by an *ad hoc* order of the M. of A. & F. [737]

*The Epizootic Abortion Order, 1922 (b),* which is enforced by local authorities, does not make this disease notifiable, but prohibits the exposure in markets, fair-grounds or sale-yards of cows or heifers which have calved prematurely during the preceding two months. The sale of such animals is prohibited unless, before the sale, written notice of the premature calving is given to the purchaser, and a similar restriction is placed on the sending of such animals to a bull for service. [738]

*The Epizootic Lymphangitis Order, 1905 (c),* is generally similar in its provisions to the Anthrax Order (*supra*), and is to be executed and enforced by the local authority, who have power to make regulations

(s) S.R. & O., 1928, Nos. 206, 133, 205.

(u) S.R. & O., 1928, No. 1038.

(b) S.R. & O., 1922, No. 806.

(t) S.R. & O., 1925, No. 735.

(a) S.R. & O., 1929, No. 419.

(c) S.R. & O., 1905, No. 1014.

for the removal and burial or destruction of carcases of horses which were affected with the disease. This power of making regulations can only be exercised by the local authority or their executive committee. Army horses are exempted from the provisions of the order, but the local authority must dispose of the carcases of affected army horses. [739]

*The Glanders or Farcy Order*, 1929 (d), is executed and enforced by the local authority. Important provisions of this order require the slaughter of diseased horses, the mallein testing of suspected horses, and the submission to the chief veterinary officer of the Ministry of reports and material to enable him to determine whether disease existed in the carcases of suspected animals. As to compensation for slaughtered horses, see "Compensation," post. This order does not bind the Crown, and there are, therefore, no duties in relation to army horses. [740]

*The Parasitic Mange Orders*, 1911 and 1918 (e), in addition to the usual requirements as to separation of diseased animals from healthy animals, and as to disinfection, require the treatment of affected animals in an approved manner, by and at the expense of the owner. The restrictions on movement are elaborate, and are designed to allow a limited amount of use to be made of working horses suffering from psoroptic mange. [741]

*The Rabies Orders* of 1919 (f) provide for notification of suspected disease, and place on the owner or person in charge of the suspected animal (if a dog or cat) the obligation to detain and isolate it in a kennel or other building until action has been taken by the local authority, or the dog or cat has been killed by the owner. A local authority may at once slaughter a diseased or suspected dog or cat, or one shewn to have been bitten by a diseased dog or cat, without awaiting the result of the usual veterinary inquiry. Whether or not this is done, the case must be inquired into by a veterinary inspector, or by a veterinary practitioner specially appointed for the purpose, who must report to the Ministry of A. & F. A post-mortem examination of the carcase of any infected or suspected animal is to be made, and such material for further examination as the Ministry require must be forwarded to the Ministry, unless the result of the examination shows that rabies did not exist. The orders contain provisions as to isolation, disinfection and disposal of carcases. [742]

*The Sheep-Pox Order*, 1895 (g), is directed to the isolation and slaughter of infected animals by the local authority. As to compensation, see "Compensation," post. [743]

*The Sheep-Scab Orders*, 1928, 1930 and 1934 (h), provide a complete code dealing with notification, veterinary inquiry (i), isolation and treatment of infected animals, and cleansing and disinfection. The orders also enable the M. of A. & F. to declare areas to be Movement Areas or Double-Dipping Areas, in which special restrictions are imposed. A local authority may make regulations requiring the

(d) S.R. & O., 1929, No. 718.

(e) S.R. & O., 1911, No. 1152; 1918, No. 675.

(f) S.R. & O., 1919, Nos. 464, 1063.

(g) S.R. & O., 1895, No. 101. This disease is unknown in England and is only likely to be introduced by imported infected sheep. Details of the order are therefore omitted.

(h) S.R. & O., 1928, No. 81; 1930, No. 9; 1934, No. 37.

(i) Diagnosis of sheep-scab by a veterinary inspector of a local authority is subject to an appeal to the Minister of Agriculture (Sheep-Scab Order of 1928, Art. 6).

dipping of sheep moved into their district from any other district, requiring the notification of the arrival in the district of sheep from other districts, and requiring the periodical dipping of sheep in the district. In practice, groups of local authorities are encouraged by the Ministry to make similar regulations, and to permit free movement within the group of districts. The orders provide for the approval of sheep-dips by the Ministry, for the sampling of dips by inspectors and constables, and enable local authorities to provide and maintain dipping-places. Local authorities may slaughter ownerless sheep affected with or suspected of disease. [744]

*The Swine Fever Orders*, 1908, 1911, 1912, 1916 and 1917 (k), deal with notification of disease, the declaration of infected places (by the service of notice by the local authority's inspector), the placing of premises under movement restrictions, and, generally, the precautions to be taken to prevent the spread of infection. The diagnosis of disease by veterinary inquiry, the slaughter of diseased animals, and the payment of compensation are entirely in the hands of the M. of A. & F. A local authority may make regulations requiring the examination by their officer of swine entering any market, fair, auction, sale-yard or place of exhibition. The Order of 1911 requires the keeping of registers by pig-dealers (l), castrators and owners of boars. [745]

*The Tuberculosis Orders* of 1925 (m) require the notification of tuberculosis in bovine animals, and place upon local authorities the obligation to examine bovine animals suspected of suffering from tuberculosis or other chronic disease of the udder or of giving tuberculous milk, or of suffering from tuberculous emaciation, or from a chronic cough with definite clinical signs of tuberculosis. Bovines on the same premises as the suspected animals are also to be examined if the veterinary inspector thinks it desirable to do so. Animals suffering from tuberculosis, in one of the four forms above mentioned, are to be valued and slaughtered ; see "Compensation," post. [746]

In addition to the orders dealing with specified diseases, certain orders regulate the movement of animals (n), and deal with the movement of animals generally, e.g. the *Transit of Animals Orders*, 1927 and 1931 (o). The orders last mentioned provide for the protection of animals during inland or coastwise transit by rail (p), road or water, the cleansing and disinfection of railway trucks, road vehicles (q) and vessels, and the keeping of records in respect of movements by

(k) S.R. & O., 1908, No. 331 ; 1911, No. 819 ; 1912, No. 78 ; 1916, No. 439 ; 1917, No. 485.

(l) A pig-dealer is a person habitually engaged in the trade or business of selling swine (other than swine bred by him) but does not include an auctioneer selling another person's swine. See Art. 9 of the *Regulation of Movement of Swine Order*, 1922 (S.R. & O., 1922, No. 1009), for prohibition of movement of swine from a pig-dealer's premises to market, etc., in the scheduled area which includes most of England, except certain northern and western counties.

(m) S.R. & O., 1925, Nos. 681, 781.

(n) See e.g. the Order of 1922 mentioned in note (l), *supra*.

(o) S.R. & O., 1927, No. 289 ; 1931, No. 750.

(p) A railway company conveying animals is not "a person in charge" of the animals (*N. Staffs. Rail. Co. v. Waters* (1913), 78 J. P. 116 ; 8 Digest 131, 878). But see the orders of the M. of A. & F. for specific obligations of railway companies.

(q) As to carrying consecutive loads by road between the same two points, see *Nethaway v. Brewer*, [1931] 2 K. B. 459 ; Digest (Supp.) ; and the *Transit of Animals Amendment Order*, 1931, Art. 1.

certain classes of road vehicle. The Animals (Sea-Transport) Orders, 1930 and 1932 (*r*), control movements of animals by sea, other than voyages in home waters governed by the Transit of Animals Orders.

Markets, sales and lairs are controlled by the Markets, Sales and Lairs Orders of 1925, 1926 and 1927 (*s*).

All movements of animals (for this purpose cattle, sheep, goats and pigs) are required by the Movement of Animals (Records) Order, 1925 (*t*), to be recorded by the person who moves, or permits to be moved, an animal. These records are open to inspection by inspectors of the M. of A. & F. and of local authorities, and are intended to facilitate the tracing of animals in case of an outbreak of disease, but certain movements are excepted from the requirements of the order. Local authorities may supply record books to persons within their districts both for the purposes of the order of 1925 and under the amending order of 1931 (*u*). The issue of a uniform record book increases the value of the records in an emergency, and simplifies the enforcement of the orders (*a*).

All the foregoing orders impose duties on local authorities. [747]

#### IMPORTATION

In addition to the powers conferred on the M. of A. & F. by the Acts of 1894 and 1896 of dealing with the importation of animals (*b*), special provisions, summarised in paras. A to D below, as to importation, are contained in various Acts and orders of the Minister.

A. (1) The importation of carcases from European countries is prohibited, subject to exceptions in favour of cured, preserved, or treated articles (*c*). (2) The importation of fodder or straw from certain countries is prohibited (*d*). (3) Containers in which raw tongues are imported from certain countries are to be destroyed (*e*). (4) Packing-materials, meat-wrappings, and swill containing meat or bones, are controlled with a view to preventing animals from coming into contact therewith in an infective state (*f*). [748]

B. The Importation of Animals Act, 1922 (Session 2), as amended by the Ottawa Agreements Act, 1932 (*g*), permits the landing and retention alive in Great Britain of Canadian and Irish animals, despite

(*r*) S.R. & O., 1930, No. 923 ; 1932, No. 248.

(*s*) S.R. & O., 1925, No. 1349 ; 1926, No. 546 ; 1927, No. 982.

(*t*) S.R. & O., 1925, No. 1350.

(*u*) S.R. & O., 1931, No. 750.

(*a*) It has been found useful to keep a card-index of persons to whom record books are issued, either centrally or at divisional police headquarters ; notes of complaints, offences, outbreaks of disease, etc., can be made on the cards which are available to the inspectors of the M. of A. and of the local authority.

(*b*) See *ante*, p. 401. By s. 3 of the Importation of Animals Act, 1922 (1 Statutes 432), the word "imported" is substituted for the word "foreign" in relation to animals and things referred to in the Act of 1894, and amending Acts as "foreign."

(*c*) See the Importation of Carcasses (Prohibition) Orders, 1926, 1927 and 1928 (S.R. & O., 1926, Nos. 76, 78 ; 1927, No. 112 ; 1928, No. 7).

(*d*) Foreign Hay and Straw Orders, 1912 and 1913 (S.R. & O., 1912, Nos. 284, 1711 ; 1913, No. 1154).

(*e*) Importation (Raw Tongues) Orders of 1913 (S.R. & O., 1913, Nos. 449, 1153).

(*f*) Importation of Meat (Wrapping Materials) Order, 1932 (S.R. & O., 1932, No. 317) ; Foot-and-Mouth Disease (Packing Materials) Orders, 1925 and 1926 (S.R. & O., 1925, No. 1178 ; 1926, No. 42) ; Foot-and-Mouth Disease (Boiling of Animal Foodstuffs) Order, 1932 (S.R. & O., 1932, No. 803).

(*g*) 1 Statutes 429 ; 25 Statutes 94.

the provisions of the Third Schedule to the Diseases of Animals Act, 1894. In the case of cattle (whether fat or store) (*h*), the landing and subsequent movement of the cattle in Great Britain is regulated by the schedule to the Act of 1922, as amended by orders of the M. of A. & F. (*i*). So far as local authorities are concerned, their principal obligations in relation to animals imported under the Act of 1922 are to enforce the observance of the conditions under which animals are licensed out of the approved landing-places by the Ministry, and to authorise, at their discretion, special markets for the sale of imported cattle, and lairs for the reception of such cattle between their arrival from the landing-place and the time fixed for the holding of the market. A local authority may grant an authorisation in respect of part of a market only. A copy of each authorisation is to be sent forthwith to the Ministry.

The Importation of Pedigree Animals Act, 1925 (*k*), empowers the M. of A. & F. to issue orders allowing pedigree cattle, sheep, goats or swine to be landed from any of H.M. Dominions, where reciprocal arrangements are in force.

Sect. 9 of the Improvement of Live Stock (Licensing of Bulls) Act, 1931 (*l*), prohibits the movement alive from the landing-wharf of any bull imported from Ireland, which is marked under Irish law as an animal in respect of which an application for a licence, permitting the use of the bull for breeding purposes, has been refused. [749]

C. The Importation of Horses, Asses and Mules (Great Britain) Orders, 1921 and 1922 (*m*), prohibit the landing of these animals from any country except Ireland, the Channel Islands, or the Isle of Man, unless the animal is accompanied by a veterinary certificate and has been tested with mallein (without reaction) within ten days before shipment (*n*). The Ministry may test with mallein any horse, ass or mule on arrival. Local authorities are to execute and enforce the orders unless it is otherwise provided. [750]

D. The Importation of Dogs and Cats Order, 1928 (*o*), applies to all canine and feline animals and hyænas. No such animal may be brought into Great Britain from any other country (except Ireland, the Channel Islands, and the Isle of Man) unless the landing is authorised by a licence of the M. of A. & F. Animals so landed must be kept in quarantine for six months on premises under the control of a veterinary surgeon and approved by the Ministry. Special conditions may be inserted in the licence in the case of performing animals, or animals intended for breeding, exhibition, or re-export within 48 hours. Animals landed or dealt with, in contravention of the order, may be seized and detained by an inspector of the Ministry, or of a local

(*h*) S. 1 of the Act of 1922 was intended to permit the entry of Canadian store cattle; but the word "store" was deleted by s. 8 of the Ottawa Agreements Act, 1932.

(*i*) S. 4 of the Animals (Landing from Ireland, Channel Islands and Isle of Man) Order, 1933 (S.R. & O., 1933, No. 20), permits importation of animals from the Channel Islands and Isle of Man, subject to the provisions of the order. As to these countries, see s. 28 of the Act of 1894 (1 Statutes 404).

(*k*) 1 Statutes 436.

(*l*) 24 Statutes 77.

(*m*) S.R. & O., 1921, Nos. 2080, 1222; 1922, No. 1073.

(*n*) Mallein testing may be dispensed with in the case of race-horses, polo-ponies, and performing animals imported for racing, polo, or performing, or if the animal is intended to be re-exported from Great Britain within fourteen days.

(*o*) S.R. & O., 1928, No. 922.

authority, or by a police constable (*p*). The Ministry may destroy an animal so seized if the owner does not pay for its detention in quarantine. Local authorities are to execute and enforce the order, except where otherwise stated. [751]

#### EXPORTATION OF HORSES

The exportation from Great Britain of horses is prohibited unless the horse is certified by a veterinary inspector appointed by the M. of A. & F. to be capable of being conveyed to the port of destination and there disembarked without cruelty, and also to be capable of being worked without suffering (*q*). Provision is made for the slaughter of unfit horses. A number of orders imposing duties on local authorities have been made under these statutes, which are directed to the prevention of cruelty, rather than disease. [752]

#### COMPENSATION

**M. of A. & F.**—Compensation is payable by the M. of A. & F. to the owner of an animal slaughtered pursuant to the Diseases of Animals Acts in the following cases :

*Cattle-Plague.* Where the animal was affected before slaughter, one-half of its value immediately before it became affected, but not exceeding £20 ; in every other case, the full value of the animal immediately before slaughter, but not exceeding £40 (*r*). [753]

*Pleuro-Pneumonia.* Where the animal was affected before slaughter, three-fourths of its value immediately before it became affected, but not exceeding £30 ; in every other case, the full value of the animal immediately before slaughter, but not exceeding £40 (*s*). [754]

*Foot-and-Mouth Disease.* Where the animal was affected before slaughter, the value immediately before it became so affected ; in every other case, the full value of the animal immediately before slaughter (*t*). [755]

*Swine-Fever.* As in cattle plague, but not subject to the limits of £20 and £40 (*u*). [756]

The Ministry may, however, in the case of any disease, other than cattle-plague, require the slaughter by local authorities of animals which are affected by or suspected of disease, subject to payment of compensation out of the local rate (*a*). As to repayment to local authorities of part of the expenditure on compensation in cases of Tuberculosis, see "Finance," *ante*, p. 399. [757]

**Local Authorities.**—Compensation is payable by local authorities on slaughter of animals by them in the following cases :

*Glanders or Farcy.* If the certificate of the chief veterinary officer of the Ministry shows that the animal was affected with glanders—  
(1) where at the time of slaughter definite clinical evidence of disease

(*p*) Officers in coastwise districts should be on the alert to detect the landing of animals from vessels in distress or from wrecks.

(*q*) Act of 1910 as amended by the Exportation of Horses Act, 1914 ; 1 Statutes 426, 429.

(*r*) Act of 1894, s. 7 (3) ; 1 Statutes 393.

(*s*) *Ibid.*, s. 14 (3) ; *ibid.*, 395.

(*u*) *Ibid.*, s. 16 (2) ; *ibid.*, 396.

(*t*) *Ibid.*, s. 15 (2) ; *ibid.*, 396.

(*a*) *Ibid.*, s. 19 ; *ibid.*, 398.

was shown, such sum as the local authority think expedient, with a minimum of £2 for a horse, and 10s. for an ass or mule, and maxima of one-fourth the value immediately before the animal became diseased, or £20 for a horse, or £5 for an ass or mule, whichever is the less; (2) in other cases, one-half the value of the animal immediately before testing by mallein, but not exceeding £40 for a horse, or £10 for an ass or mule (b).

If the certificate shows that the animal was not affected, the compensation is the full value, with a minimum of £2 for a horse, and 10s. for an ass or mule, and maxima of £80 for a horse, and £20 for an ass or mule (b). [758]

*Sheep-Pox.* Where the animal was affected before slaughter, one-half the value of the sheep immediately before it became affected, but not exceeding 40s.; where the animal was not affected, full value but not exceeding £4 (c). [759]

*Tuberculosis.* If the animal is not affected, or if the local authority do not carry out a post-mortem examination, compensation is market value and a further sum of 20s.; if the animal is suffering from tuberculosis (not in an advanced stage) the compensation is three-fourths of the market value; if the animal is suffering from advanced tuberculosis the compensation is one-fourth of the market value. In the two latter cases the minimum compensation is 80s. (d).

The market value of the animal is the price which might reasonably have been obtained from a purchaser in the open market who had no knowledge of the existence of symptoms of disease, except such knowledge as might reasonably be obtained by inspection of the animal. If the owner and the local authority cannot agree on the market value, the animal is to be valued by a valuer appointed by the parties, or, failing agreement, appointed by the M. of A. & F., and, in either case, paid by the local authority (e). [760]

In the case of foot-and-mouth disease, a local authority may slaughter animals, paying out of the local rate compensation on the same basis as where slaughter is carried out by the Ministry (f).

Where no method is prescribed in any other order of the M. of A. & F., the method of ascertaining value for compensation prescribed by Art. 13 of the Animals (Miscellaneous Provisions) Order, 1927 (g), is to be followed. In such a case, the animal is valued on behalf of the Ministry or of the local authority, and written notice of the valuation is given to the owner. If, within fourteen days, the owner does not give a counter-notice disputing the valuation, the original valuation stands; but if a counter-notice is given, the valuation is referred to an arbitrator, appointed by the parties, or, failing agreement, appointed by a court of summary jurisdiction. The arbitrator must make his award within thirty days of appointment, and can tax or settle the amount of costs. If the arbitrator's award is for a higher valuation than the original valuation, the Ministry or the local authority pay the costs. Otherwise

- (b) Glanders or Farcy Order, 1929, Art. 12; S.R. & O., 1929, No. 718.
- (c) Sheep-Pox Order, 1895, Art. 18 (3); S.R. & O., 1895, No. 101.
- (d) Tuberculosis Order, 1925, Art. 9, as amended by Tuberculosis (Amendment) Order, 1931; S.R. & O., 1925, No. 681; 1931, No. 828.
- (e) Tuberculosis Order, 1925, Art. 7.
- (f) Foot-and-Mouth Disease Order, 1928, Art. 21; S.R. & O., 1928, No. 133.
- (g) S.R. & O., 1927, No. 290.

the Ministry or the local authority may deduct the costs from the compensation awarded.

Compensation may be withheld, where the owner has, in the judgment of the Ministry or of the local authority, been guilty of an offence against the Act of 1894 in relation to the animal, or where an imported animal was diseased at the time of landing (*h*). [761]

### OFFENCES AND LEGAL PROCEEDINGS

Sects. 52—57 of the Act of 1894 (*i*) deal with offences against the Diseases of Animals Acts and prescribe the procedure. By sect. 5 of the Act of 1927 (*k*), any person guilty of an offence is liable (*i.*) to a fine not exceeding £50; or (*ii.*) if the offence is committed with respect to more than ten animals, to a fine not exceeding £5 for each animal; or (*iii.*) where the offence is committed in relation to carcases, fodder, litter, dung, or other thing (exclusive of animals), to a fine not exceeding £10 in respect of every half ton of its weight after half a ton, in addition to the first fine of not exceeding £50.

In certain cases (*l*), the offender is liable, in the discretion of the court, to imprisonment in lieu of the fine to which he is liable under the Act of 1927.

Sections 52 and 53 of the Act of 1894 define the offences for which a person can be convicted. These are supplemented in most of the orders of the Ministry by clauses defining the persons who are to be held responsible for various breaches of the order (*m*). Reference should be made to sect. 52 (*vi.*) in relation to the offence of refusing admission to premises which an inspector or officer is entitled to enter, and/or obstructing or impeding a constable, inspector or officer. The production of records and registers to inspectors is dealt with in the several orders requiring the keeping of records and registers. [762]

By sect. 55 of the Act of 1894 (*n*) any person who thinks himself aggrieved by the *dismissal of a complaint* by, or by any determination or adjudication of, a court of summary jurisdiction under the Diseases of Animals Acts, may appeal to a court of quarter sessions (*o*).

As to proceedings for aiding, abetting, counselling, or procuring the commission of an offence, see sect. 5 of the Summary Jurisdiction Act, 1848 (*p*).

A prosecution for an offence under the Diseases of Animals Act is

(*h*) Act of 1894, s. 20 (7); 1 Statutes 399.

(*i*) 1 Statutes 416—420.

(*k*) *Ibid.*, 440.

(*l*) On a second or subsequent conviction within twelve months for an offence specified in s. 52 of the Act of 1894, or on any conviction for an offence specified in s. 53, see 1 Statutes 416, 417.

(*m*) As to railway companies, see note (*p*), *ante*, p. 406. A railway company accepting animals for transit to a point on another company's line may be liable to conviction as a person causing the animals to be moved or sent: *Midland Rail. Co. v. Freeman* (1884), 12 Q. B. D. 629; 2 Digest 298, 682.

(*n*) 1 Statutes 419.

(*o*) As to appeals to quarter sessions and legal aid thereon, see title **APPEALS TO THE COURTS** in Vol. I.

(*p*) 11 Statutes 275. As to the position of a veterinary surgeon who gives advice knowing that action on that advice will result in a contravention of the law, see *Benford v. Sims*, [1898] 2 Q. B. 641; 2 Digest 284, 568 (cruelty by working unfit horse). But mere negligence will not of itself justify a conviction for aiding and abetting; *Callow v. Tillstone* (1900), 64 J. P. 823; 14 Digest 91, 608 (veterinary surgeon negligent in certifying as sound, meat which was, in fact, unsound).

not barred by a prosecution in relation to the same facts under the Customs Acts; see sect. 56 of the Act of 1894 (*q*). [763]

*General Notes as to Legal Proceedings.* An information for an offence against the Diseases of Animals Acts may be laid by any one; the right to prosecute is not limited to local authorities (*r*).

On an information for failing to give notice of disease, or of suspected disease, the onus of proving that notice was given to a constable is on the defendant (*s*). Likewise on a charge relating to failure to cleanse or disinfect, the onus of proving cleansing or disinfection is on the defendant (*t*).

A certificate of a veterinary inspector that an animal is, or was, affected with a disease is conclusive evidence of the matter certified (*u*).

Reference should also be made to sect. 10 (5) of the Act of 1894 (*a*), as to matters conclusively proved by an order of the M. of A. & F. or of a local authority. This sub-section is extended by sect. 1 (2) of the Act of 1927 (*b*) to include notices served pursuant to directions of the Minister or of a local authority. [764]

Where the owner or person in charge of an animal is charged with an offence against the Diseases of Animals Acts relative to disease or to any illness of the animal, he is presumed to have known of the existence of the disease or illness, unless and until he satisfies the court that he did not know of it, and that he could not with reasonable diligence have obtained that knowledge (*c*). The onus of proof of both matters is on the defendant (*d*); if no evidence is tendered by or on behalf of the defendant it would appear that a court ought to convict.

Every offence against the Act of 1894 and amending Acts is deemed to have been committed either in the place where it actually was committed, or in any place where the person charged happens to be at the commencement of the proceedings (*e*).

A person who hands a false declaration to a servant may be convicted of uttering a false declaration in the place where the false declaration is used for the purpose of obtaining permission to move animals (*f*). But under the earlier Acts (now repealed) it was held that a licence to move cattle granted by a justice without the necessary evidence, but without fraud on the part of the applicant, protected a person who moved the cattle under the licence (*g*).

(*q*) 1 Statutes 419.

(*r*) *R. v. Stewart*, [1896] 1 Q. B. 300; 2 Digest 303, 708.

(*s*) *Huggins v. Ward* (1873), L. R. 8 Q. B. 521; 2 Digest 302, 704.

(*t*) Act of 1894, s. 57 (2); 1 Statutes 419.

(*u*) Act of 1894, s. 44 (5); 1 Statutes 413. But see *Harris v. Smith* (1879), 44 J. P. 361; 2 Digest 303, 707, which involved a consideration of the corresponding provision of the Contagious Diseases (Animals) Act, 1878. *Held*, the justices were wrong in refusing to admit evidence that the defendant did not in fact know of the existence of disease, but must determine whether such evidence amounted to any excuse.

(*a*) 1 Statutes 394.

(*b*) *Ibid.*, 439.

(*c*) Act of 1894, s. 57 (1); 1 Statutes 419.

(*d*) The question of reasonable diligence is a question of fact, cf. *MacLean v. Leidlaw*, [1909] S. C. 68; 2 Digest 302 f; as to onus of proof, see *Wilson v. Yates* (1927), 91 J. P. 188; Digest (Supp.) (failure to report foot-and-mouth disease).

(*e*) Act of 1894, s. 57 (2); 1 Statutes 419.

(*f*) *Oakey v. Stretton* (1884), 48 J. P. 709; 14 Digest 147, 1214.

(*g*) *Stanhope v. Thorsby* (1866), L. R. 1 C. P. 423; 2 Digest 298, 677.

In proceedings under the Act of 1894 and amending Acts, the court may order payment to the informant of such part, not exceeding one-half, of any fine or forfeiture, as the court thinks fit (*h*). By sect. 5 of the Criminal Justice Administration Act, 1914 (*i*), court fees and police fees are first to be paid from the fine. [765]

Sect. 37 of the Act of 1894 (*k*) allows an order or regulation of a local authority to be proved by the production of a newspaper purporting to contain the order or regulation as an advertisement; or by the production of a copy of the order or regulation purporting to be certified by the clerk of the local authority as a true copy.

Sect. 48 (1) of the Act of 1894 (*l*) renders it unnecessary to prove the appointment or handwriting of an inspector or other officer of the M. of A. & F. or of the clerk or an inspector or other officer of a local authority.

Every notice under the Act of 1894 or an amending Act, or under any order or regulation made under the Acts, must be in writing, and any notice or other instrument may be served on the person affected, either by delivery of it to him personally, or by the leaving it for him at his last known place of abode or business, or by sending it through the post in a letter addressed to him there (*m*).

A notice or other instrument to be served on the occupier of any building, land, or place may, except when sent by post, be addressed to him as occupier without naming him. Similarly, where any such document is to be served on several occupiers it may, except when sent by post, be addressed to them collectively as the occupiers without naming them, but separate copies of the document must be served on them severally (*n*).

Reference should be made to the Documentary Evidence Acts, 1868 to 1895 (*o*), as to the proof of orders, regulations or documents of the M. of A. & F. (*p*).

Secondary evidence of a document which has been destroyed is admissible, notice to produce the original having been served (*q*).  
[766]

#### LONDON

For the local authorities in London, see "Local Authorities," *ante*, p. 395.

The carrying out of the Diseases of Animals Acts is referred to the Public Control Committee and Department of the L.C.C.

The L.C.C. have made regulations in pursuance of article 22 (1) (d) and (e) of the Foot-and-Mouth Disease Order of 1928 (*r*), as to cleansing and disinfection of lairs and of vehicles and apparatus used for the

(*h*) Act of 1894, s. 57 (5); 1 Statutes 420.

(*i*) 11 Statutes 373.

(*k*) 1 Statutes 409.

(*l*) *Ibid.*, 414.

(*m*) Act of 1894, s. 48 (2), (3); 1 Statutes 415.

(*n*) *Ibid.*, s. 48 (4); *ibid.*, 415.

(*o*) 8 Statutes 230, 247.

(*p*) Printed Orders of the Ministry are usually proved by the production of a copy printed by, or under the superintendence of, H.M. Stationery Office. In the case of documents not printed officially, a certified copy should be obtained from the Ministry; the handwriting and official position of the certifying officer need not be proved.

(*q*) *Oakey v. Stretton* (1884), 48 J. P. 709; 14 Digest 147, 1214.

(*r*) S.R. & O., 1928, No. 133.

conveyance of animals in the County of London (except the City of London and the Liberties thereof).

Bye-laws made by the L.C.C. under the provisions of the P.H. (London) Act, 1891, for regulating the conduct of business of a knacker, include a bye-law (No. 18) as follows : "A knacker shall not remove or suffer to be removed any animal or carcase affected with infectious or contagious disease which is brought upon his premises, but shall forthwith give information thereof to the L.C.C. and to the veterinary inspector for the district, appointed under the Act of 1894, or any Act amending the same, with all details in his knowledge as to the names and addresses of the persons bringing the animal or carcase, and the then owner and any previous owner, and the place from which the same was brought, and the time when it was brought."

A bye-law has been made by the L.C.C. under the L.C.C. (General Powers) Act, 1903, sect. 54 (s), with respect to the mode of conveyance of the carcases of dead horses through and along public streets in the County of London.

Regulations have also been made by the L.C.C. in pursuance of the Acts of 1894 to 1927, and Article 27 of the Sheep Scab Order, 1928 (t), as to the double dipping of sheep and as to sheep brought into or moved within the County of London. [767]

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(s) 11 Statutes 1253.

(t) S.R. & O., 1928, No. 81.

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## DISINFECTION STATION

*See DISINFECTION.*

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# DISINFECTION

|   | PAGE       |   | PAGE       |
|---|------------|---|------------|
| <b>PRELIMINARY OBSERVATIONS</b>           | <b>415</b> | <b>Deratisation of Ships</b>                    | <b>422</b> |
| <b>SUBJECT-MATTERS</b>                    | <b>416</b> | <b>Verminous Persons</b>                        | <b>422</b> |
| Houses and Articles                       | 416        | <b>MACHINERY</b>                                | 423        |
| Houses on Cessation of Occupation         | 418        | Responsible Authorities                         | 423        |
| Cleansing of Houses or Articles           | 418        | Premises Affected                               | 424        |
| Shelter for Inmates of Infected House     | 418        | Articles Affected                               | 424        |
| Public Conveyances                        | 419        | Persons Responsible for Disinfection            | 425        |
| Regulations as to Enteric Fever and Ships | 419        | Diseases for which Disinfection may be Enforced | 425        |
| Lodging Houses under Bye-laws             | 420        | Medical Certificates                            | 426        |
| Factories and Workshops                   | 420        | Notices   | 426        |
| Dairies                                   | 420        | Consent   | 427        |
| Markets and Lairs                         | 421        | Compensation for Damage                         | 427        |
| Verminous Premises and Articles           | 421        | Power of Entry                                  | 428        |
| Verminous Ships                           | 422        | <b>LONDON</b>                                   | <b>428</b> |

*See also titles :*

BAKEHOUSES ;  
 CLEANSING OF PERSONS ;  
 DISEASES ;  
 DISEASES OF ANIMALS ;  
 EDUCATION SPECIAL SERVICES ; \*  
 FACTORIES AND WORKSHOPS ;

INSANITARY HOUSES ;  
 LODGING HOUSES ;  
 MILK AND DAIRIES ;  
 PORT SANITARY AUTHORITIES ;  
 PUBLIC HEALTH ;  
 RATS AND MICE.

\* As to cleansing of children.

## PRELIMINARY OBSERVATIONS

The term disinfection is not defined in any statute. It is commonly used to signify the application to premises, fittings, articles, etc., of agents capable of destroying the germs of disease. Broadly such agents fall into three groups : (1) heat in the form of boiling water, steam or hot air, (2) solutions or suspensions of chemical substances, and (3) lethal gases. In various enactments the expressions "cleansing" and "disinfection" are frequently associated with one another and, since the object of compulsory cleansing is the prevention of disease, it is proposed to deal in the present title with those aspects of cleansing which relate to premises, fittings and articles. As to cleansing of persons, the title CLEANSING OF PERSONS should be consulted. Similarly, the powers and duties of local authorities in relation to the destruction of infected or unclean articles are associated with those for cleansing and disinfection, and are directed to the same objects. Further, disinfestation, a term employed to describe the use of agents for the destruction of vermin which sometimes transmit infectious disease to man, falls within the scope of the general title "disinfection," especially in view of the fact that it is effected by means identical or similar to those used for the destruction of the germs of

disease. In this connection, a brief reference may be made to deratisation, a special aspect of disinfection applicable to the extermination of rats, but the titles PORT SANITARY AUTHORITY and RATS AND MICE should be consulted.

The short titles of the Infectious Disease (Prevention) Act, 1890, and of the P.H.A. Amendment Act, 1907, are rather long, and it is proposed in general to refer to these Acts respectively as "the Act of 1890" and "the Act of 1907." [768]

#### SUBJECT-MATTERS

**Houses and Articles.**—Disinfection *in situ* of a house or part of a house, and the articles contained in it, or of bedding, clothing and articles which can be removed to a disinfecting station, is usually carried out in consequence of the occurrence of infectious disease in the house. The general law on the subject is contained in sect. 120 of the P.H.A., 1875 (*a*). Arrangements are almost always made for part, at least, of the disinfection to be carried out by the local authority with the consent of the occupier of the house, who is usually also the owner of the articles. If a consent is not given, it is the duty of the local authority, on receipt of a medical certificate that disinfection would tend to prevent or check infectious disease, to call upon the owner or occupier to carry out disinfection within a specified time and, in the event of his failing to comply with such notice, they must proceed to do the work themselves and may recover the cost summarily. The person so called upon is liable to a daily penalty for default. Disinfection, on consent, by and at the expense of the authority under this section, is permissible if the person liable is unable to do the work because of poverty or for any other reason. By sect. 121 of the Act of 1875 (*b*), an authority may cause bedding, clothing or other articles, which have been exposed to infection from a dangerous infectious disorder, to be destroyed, and may give compensation.

Further means of bringing pressure to bear upon responsible persons to carry out disinfection, or to permit the authority to disinfect, are afforded by the penalties for exposure of infected things, without disinfection, imposed by other sections of the Act of 1875. Sect. 126 (*c*) makes it a punishable offence to expose, without previous disinfection, any bedding, clothing, rags or other things which may have been exposed to infection from a dangerous infectious disorder, and by sect. 128 (*d*) it is likewise an offence to let a house or part of a house in which a person has been suffering from a dangerous infectious disorder without having it first disinfected to the satisfaction of a medical practitioner. The P.H.A., 1875, does not contain a definition of "dangerous infectious disorder," but in sect. 60 of the P.H.A., 1925 (*e*), the expression "dangerous infectious disease" is defined as meaning any infectious disease named in sect. 6 of the Infectious Disease (Notification) Act, 1889 (*f*), and sects. 126, 128 of the Act of 1875 would probably be read in the light of this definition; see *post*, p. 426.

For the purpose of disinfecting removable articles, such as bedding and clothing, sect. 122 of the Act of 1875 (*g*) permits any authority to provide a proper place, apparatus and staff, an organisation usually

(*a*) 13 Statutes 674.

(*b*) *Ibid.*, 675.

(*c*) *Ibid.*, 676.

(*d*) *Ibid.*, 677.

(*e*) *Ibid.*, 1141.

(*f*) *Ibid.*, 813.

(*g*) *Ibid.*, 675.

described as a disinfecting station, and to disinfect such articles free of charge. Outside London the provision of a disinfecting station is not compulsory, but is essential to the effective exercise of the powers provided by the law for securing proper disinfection. [769]

Points of law rarely arise in connection with disinfection, since, as has already been said, amicable arrangements are usually made with the occupier of the house or the owner of the articles. Difficulties may, however, arise in securing expeditious action, or in relation to the right of a local authority to carry out disinfection in the better-class houses, or as to the method of disinfection to be adopted, or as to articles damaged in the process of disinfection, or as to the obligatory removal of articles to a disinfecting station, if reliance is placed entirely on the above sections of the Act of 1875. For these reasons, somewhat similar, but differently worded, enactments contained in the Infectious Disease (Prevention) Act, 1890, and the P.H.A., Amendment Act, 1907, have been made widely applicable to areas administered by local authorities by adoption, in the case of the Act of 1890, or by order of the M. of H. in the case of the Act of 1907.

Where sect. 5 of the Act of 1890 (*h*) has been adopted, a notice, based as before on a medical certificate, may be served upon an owner or occupier of a house or part of a house, stating that the authority intend to disinfect the house or part and articles therein, unless he does so himself within twenty-four hours to the satisfaction of the M.O.H. An authority having served such a notice must, in default of the owner or occupier, proceed to do the work under the superintendence of the M.O.H., and may recover the cost in a summary manner. If the M.O.H. is of opinion that the owner or occupier is unable to carry out effectual disinfection, and if the latter consents, the authority may act themselves without formal notice. Sect. 6 (*i*) of this Act also enables the M.O.H., if generally empowered by the local authority, by notice in writing to call upon the owner of articles which have been exposed to infection to deliver them to an officer for removal for disinfection, and failure to comply is an offence. Under sect. 6, no charge may be made for disinfection, and compensation is payable by the authority for any unnecessary damage to articles.

If sect. 66 of the Act of 1907 (*k*) has been applied by order to the borough or district, although the procedure is similar to that prescribed by sects. 5, 6 of the Act of 1890, the notice is to be served on the occupier or person in charge of a house or part of a house, or, where the house or part is unoccupied, on the owner. Sect. 66 does not permit of the recovery by the authority of the cost of disinfection or removal, and this must be defrayed from the local rate, unless the person served with a notice decides to do the work himself. The authority are permitted to destroy, or call for the destruction of, articles, as an alternative to disinfection, and compensation is payable, not only for destruction and for unnecessary damage to articles disinfected, but also for damage to the house (sub-sect. (4)). It may be noted that sect. 66 does not expressly give the authority power to compel articles to be delivered over to them for removal for disinfection at a disinfecting station, and it may be that they cannot be removed against the wishes of the person served with the notice. [770]

(*h*) 13 Statutes 818. On the adoption of this section, s. 120 of the P.H.A., 1875, is repealed.

(*i*) 13 Statutes 819.

(*k*) *Ibid.*, 935.

Further means of pressure to obtain satisfactory disinfection are also available where other sections of the Acts of 1890 and 1907 are in force. Under sect. 13 of the Act of 1890 (*l*), the casting of infectious rubbish into any receptacle, without previous disinfection, is an offence, provided that the authority have given notice under sect. 14 of this liability to the occupier on the occurrence of infectious disease in the house. If sects. 55, 59 of the Act of 1907 (*m*) have been put in force by order, these provisions prohibit the sending of undisinfected articles, which have been exposed to infection, to a laundry, and the return to a public or circulating library of books known to have been exposed to infection without submitting them to the council for disinfection.

[771]

**Houses on Cessation of Occupation.**—Sect. 7 of the Act of 1890 (*n*) extends sect. 128 of the P.H.A., 1875 (*ante*, p. 416), to include an obligation upon the occupier of a house or part of a house in which a person has within six weeks previously suffered from an infectious disease, upon the cessation of occupation, either to provide for disinfection, or to intimate the facts to the owner, unless disinfection has been carried out to the satisfaction of a medical practitioner as testified by the latter's certificate. This obligation must also be intimated to the occupier by a notice under sect. 14 of the Act sent by the local authority as soon as they become aware of the occurrence of infectious disease in a house. [772]

**Cleansing of Houses or Articles.**—A local authority may, however, require the cleansing of a house or part of a house without actual knowledge that a case of infectious disease has occurred in it, provided that a medical certificate has been received from the M.O.H. or two doctors stating that the house or part is in such a filthy condition as to endanger or affect the health of any person (*o*). The owner or occupier may, by notice, be called upon to cleanse, whitewash or purify the house or part within a specified time. Failure to comply is punishable by a daily penalty, and the local authority may, in such circumstances, do the work and recover the expenses summarily. Action may also be taken under sect. 46 if it will tend to prevent or check infectious disease, although the word disinfection is not used. The power would appear to be intended to be, and is, used for dealing with houses which, on general grounds, are considered to be a menace to health because of their uncleanliness. Where sect. 56 of the Act of 1907 (*p*) is in force, a similar provision applies to articles found in a filthy condition in any dwelling-house. Such articles may be cleansed, purified or destroyed by the local authority if the M.O.H. certifies that it is necessary in the interest of the health of any person in the house, but the local authority must bear the expense. [773]

**Shelter for Inmates of Infected House.**—The extent to which disinfection of a house requires to be carried out after the occurrence of infectious disease may necessitate the temporary absence from it of the occupants. If sect. 15 of the Act of 1890 (*q*) has been adopted, the local authority may provide temporary shelter and attendants, free of charge, for the members of any family in which infectious disease has appeared, who have been compelled to leave their dwellings for

(*l*) 13 Statutes 822.

(*n*) *Ibid.*, 820.

(*p*) 13 Statutes 932.

(*m*) *Ibid.*, 931, 933.

(*o*) P.H.A., 1875, s. 46; 13 Statutes 645.

(*q*) *Ibid.*, 822.

purposes of disinfection. Further, if sect. 61 of the Act of 1907 (*r*) is in force, the council may provide such shelter and afford accommodation to any person, not necessarily being a member of the family, who leaves an infected house, and, on the certificate of the M.O.H., they may remove to, and maintain there, free of charge, any such person with his, or his guardian's, consent, or without consent if two justices make an order for the removal. The power contained in the Act of 1907 is not restricted to the provision and use of accommodation for persons requiring to vacate their dwellings merely in order to enable disinfection to be carried out, but the power of compulsory removal which it affords increases the usefulness for the purpose of disinfection of any temporary shelter which a local authority may provide. [774]

**Public Conveyances.**—Certain duties in regard to disinfection devolve upon persons responsible for public vehicles. The general law on the subject is contained in sect. 127 of the P.H.A., 1875 (*s*), which places the duty, under penalty, upon the owner or driver of a public conveyance to arrange for its disinfection as soon as he becomes aware that it has conveyed a person suffering from a dangerous infectious disorder (*t*). The terms of sect. 64 of the Act of 1907 (*u*) are more stringent, since, where this section is in force, the owner or driver must not only cause the vehicle to be disinfected, but must also inform the M.O.H., as soon as the fact that he has conveyed a person suffering from any infectious disease (*a*) comes to his knowledge. Under sect. 64 an owner or driver who has carried such a person unwittingly may apply to the council to have the vehicle disinfected and the council must do so free of charge.

In boroughs and districts for which sect. 11 of the Infectious Disease (Prevention) Act, 1890 (*b*), has been adopted, it is an offence for an owner or driver of a public conveyance, other than a hearse, after he has received notification from the hirer that he is carrying the body of a person who has died of infectious disease, to omit to provide for subsequent and immediate disinfection. Under this section there is no obligation to inform the M.O.H. [775]

**Regulations as to Enteric Fever and Ships.**—Regulations made under sect. 134 of the P.H.A., 1875 (*c*), as extended by the Epidemic and other Diseases Prevention Act, 1883 (*d*), may include provisions for the promotion of cleansing and disinfection, and (although these words are not used in sect. 130 (*e*) of the Act, which authorises the Minister to make regulations, *inter alia*, for preventing the spread of epidemic, endemic or infectious disease) the duty of requiring measures, to be specified by notice, for cleansing and disinfection of houses or articles infected by persons suffering from enteric fever, if the M.O.H. reports that such measures are necessary, has been imposed upon local authorities, by para. 1 of Part III. of the First Schedule to the P.H. (Infectious Diseases) Regulations, 1927 (*f*).

(*r*) 13 Statutes 933.

(*s*) *Ibid.*, 677.

(*t*) As to the meaning of this expression, see *ante*, p. 416.

(*u*) 13 Statutes 934.

(*a*) Note that by s. 13 of the Act of 1907, this expression means any infectious disease to which the Infectious Disease (Notification) Act, 1889, for the time being applies within the borough or district.

(*b*) 13 Statutes 821.

(*d*) *Ibid.*, 800.

(*f*) S.R. & O., 1927, No. 1004.

(*c*) *Ibid.*, 680.

(*e*) *Ibid.*, 678.

Similarly, Arts. 24, 28, 30, 34 of the Port Sanitary Regulations, 1933 (g), made under sect. 130 of the Act of 1875, contain provisions enabling port sanitary authorities, or compelling them if required by the Minister, to provide apparatus and means for the cleansing and disinfection of ships, persons, clothing or other articles, and to cause cleansing and disinfection of such persons or things to be carried out.

It would appear, therefore, that provisions as to cleansing and disinfection may be embodied in regulations made by the Minister under sect. 130 of the Act as well as in regulations made under sect. 134.

[776]

**Lodging Houses under Bye-laws.**—Bye-laws with respect to common lodging houses, made by local authorities under sect. 80 of the P.H.A., 1875 (h), may include provisions for promoting cleanliness, and the model bye-laws issued by the M. of H. include a bye-law imposing upon the keeper the duty of causing any room which has been occupied by a person suffering from infectious disease, and any articles liable to retain infection, to be cleansed and disinfected. Such bye-laws may also provide for periodic cleansing of premises and regular cleansing of beds, bed-clothes and bedding. Similar requirements may be imposed by bye-laws for seamen's lodging houses made under sect. 214 of the Merchant Shipping Act, 1894 (i). Bye-laws as to houses let in lodgings or occupied by more than one family, made under sect. 6 of the Housing Act, 1925 (k), may also contain requirements as to cleansing at stated intervals, and sect. 8 (3) of the Housing Act, 1930 (l), extends this power to any house, however used or occupied, in an improvement area. For further details titles BYE-LAWS and LODGING HOUSES should be consulted. [777]

**Factories and Workshops.**—Under sect. 110 (2) of the Factory and Workshop Act, 1901 (m), a borough or district council (n) may make an order prohibiting home work in any house in which infectious disease has occurred until disinfection has been carried out to the satisfaction of the M.O.H. Sect. 2 (3), (4) (o) of the Act enables such a council, on certification by the M.O.H. or sanitary inspector that limewashing, cleansing or purifying is necessary for the health of any employee, to call upon the owner or occupier, by notice in writing, to do so within a specified time. Default is an offence and the authority, in such circumstances, may do the work and recover the cost summarily. Local authorities are also responsible for ensuring that the provisions of sect. 99 (p), with regard to periodical cleansing or lime-washing of bakehouses, are enforced. See title FACTORIES AND WORKSHOPS. [778]

**Dairies.**—Arts. 22 and 26 of the Milk and Dairies Order, 1926 (q), contain provisions for the cleansing and periodical washing, lime-washing, or other form of disinfection, of cowsheds, and for the frequent cleansing of buildings, furniture and fittings used in connection with the sale, storage or manufacture of milk. See title MILK AND DAIRIES.

[779]

(g) S.R. & O., 1933, No. 38.

(h) 13 Statutes 658.

(i) 18 Statutes 238.

(k) 18 Statutes 1006.

(l) 28 Statutes 403.

(m) 8 Statutes 574.

(n) See s. 154 of the Act under which "district council" includes the council of a county borough.

(o) 8 Statutes 518, 519.

(p) *Ibid.*, 567.

(q) S.R. & O., 1926, No. 821.

**Markets and Lairs.**—Cleansing and disinfection of market-places, and lairs used for the temporary accommodation of animals in connection with their sale, must be carried out immediately after their use, as provided in the Markets, Sales and Lairs Orders, 1925, 1926 and 1927 (*r*), of the Minister of Agriculture and Fisheries. For the purposes of these orders, an approved disinfectant must be used, as prescribed by the Diseases of Animals (Disinfection) Order, 1926 (*s*). As to DISEASES OF ANIMALS, see that title. [780]

**Verminous Premises and Articles.**—Special powers are provided in sects. 45, 46 of the P.H.A., 1925 (*t*), for dealing with premises (including tents, vans, sheds and boats) used for human habitation and articles infested with vermin. Vermin is defined in sect. 50 of the Act (*u*), as including eggs, larvæ and pupæ, in so far as the term applies to insects and parasites, and, although there is nothing in the definition limiting the ordinary meaning of the word, which embraces any animal of a noxious or objectionable kind, its association with provisions in the same Part of the Act for the cleansing of verminous persons seems to indicate that the powers afforded are intended to be used mainly for dealing with insect parasites.

Where sect. 46 is in force, the council on a certificate of the M.O.H. or sanitary inspector that premises are infested with vermin, may serve a notice on the occupier—or, in the case of unoccupied premises, the owner—calling upon him to adopt specified measures of cleansing within a specified time for the eradication of vermin. Failure to comply with the notice is punishable by fine, and the council may themselves do the work and recover the cost summarily. There is a right of appeal against a notice of the council to a petty sessional court, but no further appeal lies from their decision (sect. 46 (3)).

On a like certificate, the council may, if sect. 45 of the Act is in force, remove, cleanse, disinfect or destroy at their own expense articles infested, or likely to be infested, with vermin, compensating for damage, if the owner himself is not to blame for the verminous state of the article. Councils adopting sect. 49 of the Act (*a*) are permitted by this section to provide or contract for the provision of cleansing stations, apparatus and staff, and may combine with other authorities for the purpose.

A particular duty in relation to persons responsible for, or in association with, patients suffering from typhus or relapsing fever is placed upon the M.O.H. by Part II. of the First Schedule to the P.H. (Infectious Diseases) Regulations, 1927 (*b*). He must, if he considers it necessary, report to the authority that measures should be taken for the destruction of lice in the building occupied by the patient, and on the clothing of every person present in it, and the authority may, by notice to the occupier or the head of the family or other responsible person, require that such measures shall be immediately taken to the

(*r*) S.R. & O., 1925, No. 1349 ; 1926, No. 546 ; 1927, No. 982.

(*s*) S.R. & O., 1926, No. 545.

(*t*) 13 Statutes 1134, 1135. These sections are included in Part IV. of the Act, and may be adopted by the council of any borough or district, or the whole of Part IV. may be adopted ; see ss. 3, 4 of the Act ; 13 Statutes 1116. In a rural district any such provision may be put in force by an order of the M. of H. under s. 4 (2) of the Act.

(*u*) 13 Statutes 1137.

(*a*) *Ibid.*, 1136.

(*b*) S.R. & O., 1927, No. 1004.

satisfaction of the medical officer. The exercise of this power is facilitated if the relevant provisions of the P.H.A., 1925 (*supra*), have been adopted by the authority, but in this case there is no appeal against a notice, and steps to comply with it must be taken immediately.

[781]

**Verminous Ships.**—Art. 30 of the Port Sanitary Regulations, 1933 (e) (see *ante*, p. 420), allows the M.O.H. to call upon the master of a ship to take such steps as are reasonably necessary for the destruction of vermin and the removal of conditions favourable to their harbourage. In these regulations there is no definition of the word vermin, but the reference in Art. 30 to conditions likely to convey infection appears to justify the usual construction placed upon this provision that it applies to insect parasites as well as rats. In the Fourth Schedule to the regulations the obligation is placed upon the M.O.H. to arrange for the cleansing from vermin of infected articles upon a plague-infected or suspected ship, and for "disinsecting" infected articles on a ship which has had a case of typhus fever on board within the previous six weeks. [782]

**Deratification of Ships.**—This may be regarded as a special form of cleansing. In addition to the general power of port sanitary authorities and councils of counties and county boroughs, under the Rats and Mice (Destruction) Act, 1919 (d), to take steps for the destruction of rats and mice (see title RATS AND MICE), special powers and duties are prescribed by the Port Sanitary Regulations, 1933 (e), for the destruction of these forms of vermin on vessels, because of their liability to introduce plague into the country. General measures and procedure for periodical deratification are authorised by Arts. 19—21 of the regulations, and the steps to be taken in the special circumstances of plague-infected ports or of plague-infected or suspected ships are set out in Art. 25 and in the Fourth Schedule to the regulations. See title PORT SANITARY AUTHORITIES. [783]

**Verminous Persons.**—This aspect of disinfection is fully dealt with elsewhere (see titles CLEANSING OF PERSONS and EDUCATION, SPECIAL SERVICES), but requires a brief reference here, because the eradication of vermin from premises and articles and the cleansing of verminous persons are, in practice, one administrative problem. The Cleansing of Persons Act, 1897 (f), enables any council, acting either as a sanitary or as a public assistance authority, to provide a cleansing station and to place it at the disposal of any person desiring to be cleansed of vermin. But if sect. 48 of the P.H.A., 1925 (g), has been adopted by the council of a borough or district, sub-sect. (8) of the section brings the premises under the P.H.As. instead of the Act of 1897, and the council cease to be a local authority for the purposes of the Act of 1897. Where sect. 48 of the P.H.A., 1925, is in force, the council may remove persons, free of charge, to a cleansing station for disinfection, with their consent, or, failing consent, under an order made by a petty sessional court.

The local education authorities have, however, greater powers in relation to verminous children attending elementary schools. Under sect. 87 of the Education Act, 1921 (h), they may direct the school

(c) S.R. & O., 1933, No. 38.  
 (e) S.R. & O., 1933, No. 38.  
 (g) *Ibid.*, 1136.

(d) 13 Statutes 963.  
 (f) 13 Statutes 874.  
 (h) 7 Statutes 177.

medical officer or any person having his written authority (in practice a school nurse) to examine the children's bodies and clothes for vermin, and they may call upon parents to cleanse infested children. If the parents fail to do so within twenty-four hours, the authorised officer may remove the children from the school to a cleansing station for disinfection. Any sanitary authority having such premises must place them at the disposal of the education authority on terms to be agreed.

Similar powers, in relation to ships recently infected with typhus arriving in this country, are afforded for " delousing " persons on board, by Arts. 12, 30 and Part C of the Fourth Schedule to the Port Sanitary Regulations, 1933 (*i*), and special measures to be taken for the control of typhus, other than ship-borne, are authorised by Part II. of the First Schedule to the P.H. (Infectious Diseases) Regulations, 1927 (*k*), including a power of the M.O.H. to require the segregation of contacts and the complete destruction of lice on their persons and clothing.

[784]

#### MACHINERY

**Responsible Authorities.**—For the execution of the P.H.A., 1875, these (under the definition of " local authority " in sect. 4 of the Act (*l*)), are the councils of boroughs and districts, or joint boards formed by provisional order under sect. 279 of the Act (*m*). Any borough or district council may by virtue of sect. 3 of the Infectious Disease (Prevention) Act, 1890 (*n*), adopt any or all of the sections of that Act. The borough council or the district council are also responsible for the administration of any section of the P.H.A. Amendment Act, 1907, which may by order of the M. of H. be put in force in their area, or any section of the P.H.A., 1925, relating to verminous persons, premises or articles, which may be adopted or put in force by order.

The Port Sanitary Authorities (Assignment of Powers) Order, 1912 (*o*), applies sect. 5 of the Infectious Disease (Prevention) Act, 1890 (*p*), in a modified form to the districts of port sanitary authorities, who are also responsible for administering the Port Sanitary Regulations, 1933 (*q*).

Regulations made under sect. 130 of the P.H.A., 1875 (*r*), as extended by the P.H. (Prevention and Treatment of Disease) Act, 1913 (*s*), may apply powers and duties in relation to disinfection to county councils, and although no such action has been taken in any regulations of general application, provisions as to disinfection have been frequently included in regulations made specially for the prevention and treatment of disease in particular counties, where the county council have consented to exercise these powers. The powers of county councils are still further widened by sect. 57 (*2*), (*3*) of the L.G.A., 1929 (*t*), which enables them to take over from a borough or district council, by agreement, or, on the default of a borough or district council and after due inquiry, by order of the M. of H., any public health functions. There is no definition of functions relating to public health, but they would appear to include at least all the powers and duties contained in the

(*i*) S.R. & O., 1933, No. 38.

(*k*) S.R. & O., 1927, No. 1004.

(*l*) 13 Statutes 625.

(*m*) *Ibid.*, 742.

(*n*) *Ibid.*, 817.

(*o*) S.R. & O., 1912, No. 1260.

(*p*) 13 Statutes 818.

(*q*) S.R. & O., 1933, No. 38.

(*r*) 13 Statutes 678.

(*s*) *Ibid.*, 953.

(*t*) 10 Statutes 922.

P.H.As. in relation to cleansing and disinfection, and probably any which have been acquired by adoption of the Act of 1890.

Borough councils and district councils also administer the provisions relating to cleansing and disinfection in bye-laws with respect to houses let in lodgings or situated in improvement areas under sect. 6 of the Housing Act, 1925 (*u*), and sect. 8 (3) of the Housing Act, 1930 (*a*), in the Factory and Workshop Act, 1901, and in the Milk and Dairies Order, 1926. The provisions of the Markets, Sales and Lairs Orders, in relation to cleansing and disinfection are executed and enforced by the councils of boroughs with a population of 10,000 or more at the census of 1881, and elsewhere by the county council; see the Market, Sales and Lairs Order, 1925 (*b*). [785]

**Premises Affected.**—The law in relation to cleansing and disinfection usually specifies the type of premises to which it is applicable (*ante*, pp. 416, 417). It should be noted, however, that the provisions of the P.H.A., 1875, which refer to houses, are extended to canal boats by sect. 4 of the Canal Boats Act, 1877 (*c*), and to ships by sect. 2 of the P.H. (Ships, etc.) Act, 1885 (*d*). "House," as defined in sect. 4 of the P.H.A., 1875 (*e*), includes schools, also factories and other buildings in which persons are employed, and the expression appears to be wide enough to include tents, vans, sheds, etc., used for human habitation, in so far as the provisions for cleansing and disinfection are concerned, but, in any event, such structures may be dealt with by bye-laws with respect to tents, etc., made under sect. 9 (2) of the Housing of the Working Classes Act, 1885 (*f*). There is no general definition of a "house" in the Act of 1890, but the view was expressed by the Local Government Board that a school was included. On the other hand, as under sect. 2 of the Act of 1907 (*g*), that Act is to be construed as one with the P.H.As., the definition of "house" in sect. 4 of the P.H.A., 1875, applies in interpreting the Act of 1907. Sect. 61 (3) of that Act (*h*) contains a special definition of "house" for the purposes of the section as including tents, vans, sheds or similar structures used for human habitation, as well as boats on canals or other waters similarly used. As sect. 61 is intended mainly for the compulsory evacuation of houses for convenience of disinfection, it appears to be implied that the powers afforded by the Act for securing disinfection are applicable to all such premises. A similar definition of "premises" in relation to vermin is contained in sect. 50 of the P.H.A., 1925 (*i*). [786]

**Articles Affected.**—The articles referred to in the sections of the P.H.A., 1875, the Infectious Disease (Prevention) Act, 1890, and the Act of 1907, which deal with disinfection of houses (*ante*, pp. 416—418), are such as are likely to retain infection. As disinfection under these sections appears to be intended to apply both to the house and the articles contained in it, it is reasonable to assume that all the articles in any house, or part of a house, which requires disinfection, are also liable to retain infection and should be submitted to the process of disinfection which the house itself requires. Articles removable for

(*u*) 13 Statutes 1006.

(*a*) 23 Statutes 403.

(*b*) S.R. & O., 1925, No. 1349.

(*c*) 13 Statutes 790.

(*d*) *Ibid.*, 806.

(*e*) *Ibid.*, 624.

(*f*) *Ibid.*, 808.

(*g*) *Ibid.*, 911.

(*h*) *Ibid.*, 934. See also summary of s. 61, *ante*, p. 419.

(*i*) 13 Statutes 1137.

disinfection under sect. 6 of the Act of 1890 (*k*) are referred to in the section as bedding, clothing or other articles which have been exposed to infection, and similar wording is used in sect. 55 of the Act of 1907 (*l*), prohibiting the sending to a laundry of infected articles without previous disinfection. Articles which may be cleansed of vermin under sect. 45 of the P.H.A., 1925 (*m*), are those which are known to be infested or are likely to be so as the result of use by or contact with a verminous person. [787]

**Persons Responsible for Disinfection.**—Under s. 120 of the P.H.A., 1875 (*n*), either the owner or the occupier of a house or part of a house may be called upon to disinfect it and the articles therein. The term "owner" is defined in sect. 4 of the Act (*o*) as the person who receives the rackrent, whether on his own account, or as agent or trustee, or who would receive it, if the premises were let. The occupier is not defined.

Under sect. 5 of the Act of 1890, responsibility again devolves upon the owner or occupier and, for the purposes of this Act, the definition of occupier in s. 16 of the Infectious Disease (Notification) Act, 1889 (*p*), is by sect. 2 of the Act of 1890 applied, viz. as including a person having the charge, management and control of the building including, in the case of a house let in tenements or in lodgings, the person who receives the rents either on his own account or as agent.

In sect. 66 of the Act of 1907 (*q*), the responsible person is "the master" of the house, who is defined in sub-sect. (5) in terms somewhat similar to those used in sect. 16 of the Infectious Disease (Notification) Act, 1889; but an owner may be called upon to disinfect an unoccupied house or part of a house. Similarly the responsible person for disinfecting premises under sect. 46 of the P.H.A., 1925 (*r*), is the occupier, or, in the case of vacant premises, the owner. [788]

**Diseases for which Disinfection may be Enforced.**—In relation to disinfection, there is no uniformity of reference in the various enactments to the infectious diseases whose transmission it is intended to prevent. In the principal sections of the Acts which lay down the procedure for securing disinfection (see *supra*, pp. 416—418), such diseases are described as infectious disease or as dangerous infectious disease. In sects. 121, 126—129 of the P.H.A., 1875 (*s*), dealing with exposure of infected things and their destruction the term "dangerous infectious disorder" is used, but the corresponding sections of the Acts of 1890 and 1907 employ simply the words "infectious disease." By sect. 2 of the Act of 1890 (*t*), the expression is defined as meaning the diseases mentioned in the Infectious Disease (Notification) Act, 1889, and any others included in the manner provided in that Act. A definition to the same effect will be found in sect. 13 of the Act of 1907 (*u*).

Art. 2 of the Port Sanitary Regulations, 1933 (*a*), enables port sanitary authorities to enforce measures of disinfection for any epidemic or acute infectious disease, except venereal disease.

Apart from these provisions, and any special measures applicable

(*k*) 13 Statutes 819.

(*l*) *Ibid.*, 931.

(*m*) *Ibid.*, 1134.

(*n*) *Ibid.*, 674.

(*o*) *Ibid.*, 624.

(*p*) *Ibid.*, 816.

(*q*) *Ibid.*, 935.

(*r*) *Ibid.*, 1135.

(*s*) *Ibid.*, 675—677.

(*t*) *Ibid.*, 816.

(*u*) *Ibid.*, 915.

(*a*) S.R. & O., 1933, No. 38.

to a particular disease prescribed by regulations of the M. of H., there is no certainty as to which infectious disease may be regarded as justifying the enforcement of disinfection. It is customary to assume that where the term dangerous infectious disease, or dangerous infectious disorder is used without definition, its application is limited to the diseases mentioned in sect. 6 of the Infectious Disease (Notification) Act, 1889 (b), but, if this is so, then disinfection cannot be enforced for the prevention of such a fatal disease as plague outside a port sanitary district. Probably, however, action could safely be taken by a local authority under the P.H.A., 1875, in the case of a disease like plague, on the ground that it is demonstrably infectious and liable to cause death. See on this question the title DISEASES. [789]

**Medical Certificates.**—Enforcement of disinfection by a local authority under sect. 120 of the P.H.A., 1875 (c), must be preceded by the submission to them of a medical certificate (d), that disinfection is required, and this certificate must be signed either by the M.O.H. or by a registered medical practitioner. The same procedure must be followed where the powers of sect. 5 of the Act of 1890 (e), or of sect. 66 of the Act of 1907 (f), are exercised by way of compulsion. An owner who lets a house, or part of a house, which has been infected may be prosecuted under sect. 128 of the P.H.A., 1875 (g), unless he produces a certificate (h) signed by a registered medical practitioner that it has been disinfected to the latter's satisfaction, and the same obligation rests upon an occupier vacating such a house, or part of a house, without informing the owner of the circumstances, if sect. 7 of the Act of 1890 (i) is in force in the area. The provision as to sending infected articles to a laundry, contained in sect. 55 of the Act of 1907 (k), imposes the condition that such articles must have been first disinfected to the satisfaction of the authority, or the M.O.H., or a registered medical practitioner, so that a certificate signed by either of the two latter must be accepted. As to the cleansing of filthy houses under sect. 46 of the P.H.A., 1875 (l), a certificate (m) signed either by the M.O.H. or by any two registered medical practitioners is required before action is taken by an authority, but the corresponding steps for cleansing articles, under sect. 56 of the Act of 1907 (n), can be taken only on the certificate of the M.O.H. A certificate of that officer or the sanitary inspector is required before compulsory disinfestation of verminous articles and houses is carried out by a local authority under the powers obtained by the adoption of sects. 45, 46 of the P.H.A., 1925 (o). [790]

**Notices.**—When cleansing, disinfection or disinfestation by a responsible person is demanded, the law requires that the local authority should serve a formal notice upon him to that effect. Under sect. 120

(b) 13 Statutes 813.

(c) *Ibid.*, 674.

(d) For form of certificate, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 228.

(e) 13 Statutes 818.

(f) *Ibid.*, 935.

(g) *Ibid.*, 677.

(h) For form of certificate, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 233.

(i) 13 Statutes 820.

(k) *Ibid.*, 931.

(l) *Ibid.*, 645.

(m) For form of certificate, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 397.

(n) 13 Statutes 932.

(o) *Ibid.*, 1134, 1135.

of the P.H.A., 1875 (*p*), the notice (*q*) calling for disinfection must be given by the local authority and should be signed by the clerk; and if action is taken under sect. 66 of the Act of 1907 (*r*), the procedure is the same. If, however, sect. 5 of the Act of 1890 (*s*) has been adopted, the clerk must serve a notice on receipt of a medical certificate that disinfection is desirable, and need not wait for the authority to consider the case. Destruction by the authority of infected articles under sect. 121 of the P.H.A., 1875 (*t*), requires the formal direction (*u*) of the authority, unless this power has been delegated to a committee, but their compulsory removal for disinfection under sect. 6 of the Infectious Disease (Prevention) Act, 1890 (*a*), may be carried out by notice either of the authority, or of the M.O.H., if the authority have given him a general power to act in this way. If sects. 7, 13 of the latter Act (*b*) (which deal with vacation of infected houses and the casting out of infectious rubbish without disinfection) are in force in the area, the authority must give notice of these sections to the occupier of any house in which infectious disease has, to their knowledge, occurred. Leaflets conveying this information may be distributed by the health department as a routine practice, but they should bear the name either of the clerk, or of the M.O.H. The cleansing of filthy houses under sect. 46 of the P.H.A., 1875 (*c*), requires a formal notice (*d*), as does also the disinfestation of houses under sect. 46 of the P.H.A., 1925 (*e*), where that section is in force. [791]

**Consent.**—When disinfection is carried out by the council with the consent of the responsible person, his formal consent in writing should be obtained (*f*). [792]

**Compensation for Damage.**—The process of disinfection may entail damage, avoidable or unavoidable, to houses or articles. When damage results from action taken under the P.H.A., 1875, full compensation is to be paid by the council under sect. 308 of that Act (*g*), if the owner is not himself in default. It appears that this liability rests on the authority when disinfection has been carried out by them with the owner's consent, even if the damage sustained is a necessary part of the process (*h*). Sect. 308 of the Act of 1875 is not applied by the Act of 1890, and apparently a claim for damage resulting from the disinfection of a house under sect. 5 of that Act (*i*) would only lie in the event of negligence on the part of the authority. Both sect. 6 of this Act (*k*) (which relates to articles removed for disinfection), and

(*p*) 13 Statutes 674.

(*q*) For form of notice, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 226.

(*r*) 13 Statutes 935.

(*s*) *Ibid.*, 818.

(*t*) *Ibid.*, 675.

(*u*) For form of direction, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 226.

(*a*) 13 Statutes 819.

(*b*) *Ibid.*, 820, 822.

(*c*) *Ibid.*, 645.

(*d*) For form of notice, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 397.

(*e*) 13 Statutes 1185.

(*f*) For forms, see Encyclopaedia of Forms and Precedents, Vol. XII., p. 225.

(*g*) 13 Statutes 755.

(*h*) *Foster v. East Westmoreland R.D.C.* (1903), 68 J. P. 103 (a county court decision).

(*i*) 13 Statutes 818.

(*k*) *Ibid.*, 819.

sect. 66 of the Act of 1907 (*l*), make special provision for compensation to be paid by the authority for unnecessary damage caused in the exercise of their functions under those sections. When disinfection of verminous articles is carried out under sect. 45 of the P.H.A., 1925 (*m*), compensation is payable for damage, if the verminous state of the articles is not due to any act or default of the owner. If articles are destroyed, otherwise than at the request of the owner, under sect. 121 of the P.H.A., 1875 (*n*), or sect. 66 of the Act of 1907 (*o*), compensation is payable. See also *ante*, pp. 283, 284. [793]

**Power of Entry.**—The P.H.A., 1875, does not confer an express power of entry for purposes of disinfection, but the power in sect. 120 (*p*) to carry out disinfection on the default of an owner or occupier appears to imply a right of entry for the purpose. If action is taken under sect. 5 of the Act of 1890 (*q*), any officer appointed for the purpose is authorised by sect. 17 (*r*) to enter premises for the purposes of sect. 5 between 10 a.m. and 6 p.m.; and where sect. 66 of the Act of 1907 (*s*) is in force, the local authority, presumably in the person of an authorised officer, may enter between 6 a.m. and 9 p.m. A power of entry for the inspection and disinfection of verminous houses and articles is allowed by sect. 47 of the P.H.A., 1925 (*t*), between 9 a.m. and 6 p.m., by means of the application of sects. 102, 103 of the P.H.A., 1875 (*u*). [794]

**London.**—The disinfection of persons, houses, bedding, clothing, etc., in the administrative County of London is provided for mainly by the P.H. (London) Act, 1891 (*a*).

As respects the disinfection of persons, see title CLEANSING OF PERSONS.

As regards the disinfection of bedding, clothing and other articles which may have been in contact with some dangerous infectious disease, the local authority is bound by sect. 59 of the P.H. (London) Act, 1891 (*b*), to provide proper premises with all necessary apparatus and attendance for the disinfection of bedding, clothing, etc., which may have been infected, and to cause such articles to be destroyed or disinfected and returned, and may do so free of charge. Under sect. 60 of the Act, where the M.O.H. or other legally qualified medical practitioner certifies that the disinfecting of any house or of any articles therein would tend to prevent or check any dangerous infectious disease, the local authority must serve a notice on the master, or where the house is unoccupied on the owner, of the house that the same will be disinfected unless he informs the local authority within twenty-four hours of the receipt of the notice that he will cleanse and disinfect the house and articles therein to the satisfaction of the M.O.H. or other medical practitioner within the time fixed in the notice. If he fails to comply with these requirements, or if he consents, the house and articles therein are to be disinfected by the officers, and at the cost of the local authority (*ibid.*). Where any unnecessary damage is caused to a house or any article in the course of disinfection, the master or owner may recover compensation from the local authority (sect. 60 (*5*)).

(*l*) 13 Statutes 935.

(*n*) *Ibid.*, 675.

(*p*) *Ibid.*, 674.

(*r*) *Ibid.*, 823.

(*t*) *Ibid.*, 1185.

(*a*) 11 Statutes 1025.

(*m*) *Ibid.*, 1134.

(*o*) *Ibid.*, 935.

(*q*) *Ibid.*, 818.

(*s*) *Ibid.*, 935.

(*u*) *Ibid.*, 665, 666.

(*b*) *Ibid.*, 1062.

Where any bedding, clothing or other articles have been exposed to the infection of a dangerous infectious disease, the local authority may serve a notice on the owner requiring him to deliver such articles to an officer of the local authority for disinfection (sect. 61). Failure to comply with the notice renders the owner liable to a fine not exceeding £10. After being disinfected the articles are to be returned to the owner free of charge, and if any unnecessary damage has been done, the owner may recover compensation (*ibid.*).

The master of a house in which any person is suffering from a dangerous infectious disease may require the local authority to provide for the removal and disinfection of any rubbish which may have been infected (sect. 62 (2)). Where a person ceases to occupy a house in which any person has within six weeks previously been suffering from a dangerous infectious disease, he must have the house disinfected to the satisfaction of a legally qualified medical practitioner, as certified by a certificate signed by him, or in default is liable to a fine not exceeding £10.

Every sanitary authority may provide premises and apparatus for the disinfection of articles infected by diseases other than dangerous infectious diseases, and may disinfect and return such articles free of charge (sect. 59).

With regard to public conveyances, it is the duty of the owner or driver who acquires knowledge of any person suffering from a dangerous infectious disease having been conveyed in his conveyance, to give notice to the local authority and to have the conveyance disinfected (sect. 70). He may recover the expense of disinfecting from the person conveyed or the person causing that person to be conveyed, but the local authority must, on request, provide for the disinfection of the conveyance and may do so free of charge (*ibid.*). Where a public conveyance (other than a hearse) has been used for the conveyance of the body of a person who has died from a dangerous infectious disease, the owner or driver must, on the fact coming to his knowledge, have the conveyance disinfected (sect. 74).

Under sect. 41 of the Metropolitan Police Courts Act, 1889 (c), certain powers were conferred on magistrates on the certificate of guardians or overseers together with that of the medical officer for the parish or union to order the occupier to cleanse the house or in default to order the guardians or overseers to do so at the occupier's expense. It is believed that these powers are no longer used. The certifying power has apparently passed to the L.C.C. and the sanitary authorities.

[795]

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(c) 18 Statutes 516.

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## DISORDERLY BEHAVIOUR

*See OFFENSIVE BEHAVIOUR.*

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# INDEX

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- CONSTITUTIONAL LAW AND LOCAL GOVERNMENT, 1—8  
British constitution, origin and development of, 2  
    persons and bodies having powers and duties under, 2  
constitutional law, as distinguished from local government law, 5  
“constitutional law,” definition of, observations on, 1  
delegation of powers—  
    judicial and *quasi* judicial, 7—8  
    legislative, 6—7  
local authorities and central departments, 4—5  
    origin, functions and powers of, 3  
    powers and duties of, derivation of, 3—4  
government law, place in English legal system of, 2—3  
    services, education, 6  
        highway authorities, control of, 6  
    position of Minister of Health as to, 5
- CONTINUATION SCHOOLS, 9—11  
aim of, 9—10  
attendance at—  
    compulsory, 10  
    enforcement of, 10  
    exemption from, 10  
establishment of, 9  
    how far established, 11  
London, in, 11  
regulation as to, 11
- CONTRACTOR'S PRINCIPLE. *See title VALUATION FOR RATING.*
- CONTRACTS, 12—28  
introductory note, 12—13  
of local authorities—  
    arbitration, submissions to, 19  
    alteration of terms of, 18—19  
    breach of, damages for,  
        liquidated as distinguished from penalty, 20  
    Public Authorities Protection Act, 1893 does not apply, 18  
building, certificates under, 19  
Burial Acts, under, 27  
compromises, 16  
contracts of committees, 25—26  
    for special purposes, 26  
fair wage clause in, 28  
foreign goods, 28  
individual member, liability of, 28  
interest in—  
    by member of authority, “contractor or other matter,” meaning of,  
        [23]  
        disclosure of, 23—25  
            in writing, 24  
            penalty on failure to make, 25  
            record of, 24  
        disqualification from voting by, 24  
            “members,” who are, 23—24  
            “pecuniary interest,” what constitutes, 23,  
                [24]
- of officers, notice of, 25

CONTRACTS—*continued.*of local authorities—*continued.*

part performance, specific performance where, 16

presumption of due execution, 13—14

Law of Property Act, 1925, s. 74, provisions of, 14

ratification of, 21—22

under seal, 21—22

where offer withdrawn, 22

rectification and rescission of, 21

contracts under seal, 21

regulation of, 12—13

representations and warranties, 17—18

implied, 18

seal, absence of, as a defence, 16—17

effect of, 13

affixing, 17

withdrawal of offer before, 17

necessity for, 13

exceptions to, 14—16

matters of urgency, 14

trading corporations, contracts by, 15

trivial matters, 14

local authority having no, 13

ratification under, 21—22

service, penalty for breaking, 27

sureties for the due performance of, 20—21

liability, cesser of, 21

for fraud or omission of contractor, 20

to have details of, 20

standing orders as to, 13, 27

person entering into contract with authority not bound to inquire

[whether standing orders have been complied with, 13, 27]

powers to act, presumption of, 27

the King's Roll, 28

trades unions, restrictions as to, 27

with agents and servants, 22—23

appointments of, 22—23

## CONTRIBUTIONS TO COSTS OF WORKS AND SERVICES, 29—40

applications for financial assistance, general principles for the consideration of,  
[31—32]

arterial roads, construction of, 31

introductory note, 29

London, co-operation between L.C.C. and City of London and Metropolitan  
[Borough Councils, as to—

health services, 39

housing, 39—40

open-air baths, 40

street improvements, 39

London, co-operation between L.C.C. and out-county authorities, as to—

arterial roads, 38

education, 37

health services, 38

hospitals, 37

Lee Conservancy Catchment Board, 38

main drainage, 37

railway assessment authority, 38

regional planning, 38

London, co-operation between L.C.C. and voluntary associations as to—

housing, 40

maternity and child welfare, 40

welfare of the blind, 40

power of local authorities to contribute to voluntary associations or bodies,  
[35—36]

towards works of other local authorities

[or to execution of works in their own areas, 31—35]

provision of hospitals, etc., 30

sewerage schemes, 30

under Advertisement Regulation Acts, 34

## INDEX

### CONTRIBUTIONS TO COSTS OF WORKS AND SERVICES—*continued.*

- under Highways and Locomotives Act, 1878...34
- Isolation Hospitals Act, 1893...34
- Land Drainage Act, 1930...35
- Local Government and Public Health Acts, 33—35
- Private Street Works Act, 1892...35
- Town and County Planning Act, 1932...32

### CONTROL OF ELEVATIONS, 41—45

- Advisory Committees, 43—44
  - membership of, 41
    - for more than one area, 41
    - member of Surrey County Council, 42
  - amenity of district secured by, 41
- building or chimneys exceeding 45 feet in height, deposit of plans of, 42
- Essex County Council Act, 1933, s. 133 (11), provisions of, 42
- London in, London Building Act, 1930, provisions of, 44
  - exemptions from, 44
  - “height,” meaning of, 44
  - working-class dwellings, as to, 45
- power to make bye-laws for the purposes of, 41
  - county council not responsible for, 42
- under Town and Country Planning Act, 1932...42—43
  - application to County of London, 45
    - local authority for as respects City of London, 45
    - County of London, 45
  - schemes under, 42—43
    - appeal against provisions of, 42
    - land mainly used for agriculture, 42
    - plans to be furnished, 43
    - provision of, 43
- view, purchase of property for preservation of, 41

### CONTROL OF EXPENDITURE. *See title BUDGETARY CONTROL.*

### CONTROLLED INDUSTRIES. *See title REGULATED INDUSTRIES.*

### CONVENIENCES, SANITARY. *See titles PUBLIC LAVATORIES; SANITARY CONVENIENCES.*

### CONVEYANCING, 46—57

- appropriation of land to other purposes, limitations on, 51—52
- contract for purchase, 48—54
  - by agent, 49
    - appointment of agent, 49
    - ratification of contract, 49
  - committees, 49
    - powers of, 49
  - evidence of, 48
  - particulars and conditions of, 50—54
    - auction sale, conditions of, 53
    - clause making contract conditional on obtaining sanction to loan, [52] preventing merger of contract in conveyance, 52
  - completion, date for, 51
    - time for examination of title deeds, etc., 51
  - costs, 52
  - covenants and stipulations, 51—52
    - restrictive covenant, discharge or modification of, 52
  - provision of purchase money, temporary loans, etc., 51
  - registered land, 53
    - abstract of title, copies, etc., expenses of, 53
  - registration of contract, 53
  - stamp duty, 53
  - title of authority, 50
    - land, 50
  - easements, charges, etc., inquiries as to, 50
  - town planning agreements, as to, 54
  - vacant possession, 51

CONVEYANCING—*continued.*

- contract for purchase—*continued.*
  - sealing, 48
    - exceptions to rule, 48
  - standing orders, as to, 48
- conveyance, 54—55
  - acknowledgment of right to production of deeds, 55
  - certificate of value under Finance (1909–10) Act, 1910...56
  - entry in terrier, 57
  - execution of, affixing seal, 56
  - examination of title, 54
  - necessity for, 54
  - parts of, 54—55
    - covenants, 55
    - habendum*, 55
    - parcels, 55
    - recitals, 54
    - testatum*, 54—55
      - receipt by, 54
      - vendor a trustee, mortgagee, etc., where, 55
        - of leasehold property, 55
  - title of parties, 54
- production under Finance Act, 1895...57
  - 1931...57
- registration in county register, 57
  - of assignment of lease, 57
  - with Board of Education, 57
- stamp duty, 56
- power to take a conveyance of land, 46—48
- borough council, common law right of, 47
- local authorities under Local Government Act, 1933...47—48
  - licence in mortmain, as to, 47—48
- municipal corporation, 46—47
  - under charter of incorporation, 47
- rural parish, representative body of, 48

CO-OPERATION BETWEEN LOCAL AUTHORITIES. *See* title JOINT ACTION.

## COPYRIGHT AS AFFECTING LOCAL AUTHORITIES, 58—61

- copyright—
  - definition, 58
  - infringement by local authorities of, 58
    - entertainments, 58—59
  - local authorities as owners of, 60—61
    - agenda, minutes of council, etc., 61
    - plans of borough surveyor, as to, 61
  - performing rights and infringement of, 59
    - duties of local authorities, 59—60
- Performing Right Society, constitution and functions of, 60
  - licences and charges of, 60

## CORONERS, 62—77

- actions against, 70
  - acts done in excess of, or without jurisdiction, 70
- appointment of, 63—64
  - borough, 64
  - county, 64
- classification of—
  - by virtue of office, 63
  - county and borough, 63
  - franchise, 63
- Coroners (Amendment) Act, 1926, s. 13, provisions of, 63
- court, contempt of, 70
  - rules of evidence in High Court and criminal courts not applicable to, 62
    - taking photographs, etc., in, 71
- deputy and assistant deputy, 67
  - appointment of, 67
  - duties of, 67

## INDEX

### CORONERS—*continued.*

- districts in counties of, 63
- duties of—
  - acting as sheriff, 67
  - inquest *super visum corporis*, 67—68
    - discretion as to, 68
    - must be no delay, 68
    - no absolute right to hold, 68
    - occasion for, 68
    - on report from proper authorities, 68
    - order for burial, 68
    - removal of body out of England, 68
    - treasure trove, concealment of, 69
      - title to, 69
      - what constitutes, 68
    - upon treasure trove, 67—68
      - the bodies of several persons, 68
    - view of body, as to, 68
  - ordering post-mortem examination, 67
  - expenses and returns of, 76
  - franchise—
    - “franchise,” meaning of, 66
    - franchise area, merger of, 67
    - “franchise coroner,” meaning of, 66
    - cesser of right to fill office of, 67
    - King’s Coroner and Attorney, 67
    - of the King’s household, 67
  - general note on, 62—63
  - inquest, adjournment of, 70
    - attendance of prisoner at, 73
    - certificate as to death and verdict, registration of, 74
    - evidence at, publication of, 74
    - order for burial, 74
      - felo de se*, in case of, 74
      - to whom given, 74
    - place of holding, 70
  - procedure in case of murder, manslaughter, or infanticide, 70
    - where criminal proceedings instituted, 78
  - the inquisition, 74—75
    - charge of murder, manslaughter or infanticide by, 75
    - coroner’s warrant for arrest, 75
    - witnesses bound over to give evidence as to, 75
    - custody of, 75
    - form of, 74—75
    - quashing, 75
      - grounds for, 75
    - powers of High Court, as to, 75
  - the jury, cases in which required, 71—72
    - disagreement of, discharge on, 71
    - failure to obey summons to serve on, penalty for, 71
    - inquisition in writing of, 74
    - refusal to answer questions by member of, 71
    - swearing of, 71
    - verdict of majority, coroner may accept, 71, 74
    - rider is not part of, 74
  - unnecessary, certificate of coroner, as to, 74
  - view of the body, 72
    - body destroyed or irrecoverable, where, 72
    - burial or cremation prior to, 72
    - by the jury, 72
    - inquest held without, 72
  - witnesses, 72—73
    - as to sanity of deceased person, 72
    - depositions of, 75—76
      - admissibility in evidence of, 76
    - evidence tending to incriminate, 72
    - examination of, 72
    - medical, 73
      - evidence of, 73

CORONERS—*continued.*inquest witnesses—*continued.*

medical post-mortem examination, order for, 73

report upon, 73—74

summons to, 73

outside jurisdiction, Crown office subpoena for, 73

statements of, 73

summons to, 72—73

penalty on failure to answer, 73

who may attend, 71

counsel or solicitors, as to, 71

judges of the High Court are *ex officio*, 63

jurisdiction of, 65

where body lying, 65

justice of peace *ex officio*, 63

liabilities of, removal from office, 69 •

for inability, 69

misbehaviour, 69

examples of, 69

London, City of, coroner for, 77

powers of, in case of loss or damage by fire, 77

coroners' districts in, 76

inquests in, place of holding, 77

privileges of, 69

qualification of, 64

removal from office, 66

resignation of, 66

salary and fees of, 65

sheriff's substitute, 63

statutes affecting, 62

superannuation, 65—66

vacation of office on, 66

treasure trove, jurisdiction as to, 63

CORPORATE BUILDINGS. *See title OFFICIAL BUILDINGS.*

## CORPORATE LAND, 78—82

acquisition of, by agreement, 78

appropriation, not applicable to, 81—82

charge on, 81

conveyance of, approval of Minister of Health, as to, 81

restrictive covenants, where, 81

definition under Local Government Act, 1933...78

disposal of, ancient monuments, saving for, 82

by grant, enactments affecting, 81

sale or exchange, 81

in consideration of perpetual rentcharge, 81

investment of capital money on, 81

gifts of, borough councils, as to, 79

for the benefit of inhabitants of area, power of local authorities to land, what included in term, 78 [accept, 78—79

leasing and letting, 79—80

ancient monuments, 80

“any land” under Local Government Act, 1933, s. 164, not “corporate”

land, 80

borough council by, terms and conditions of, 79

building lease, meaning of, 79

Local Government Act, 1933, s. 172, provisions of, 79

mining lease, meaning of, 79

renewals of leases, as to, 80

trust, covenant, or agreement, where, 80

working-men's dwellings, for the purposes of, 80

London, as to, 82

mortgage of, 81

rents and profits of, to be carried to general rate fund of borough, 80

repairs, etc., payment of costs of, 81

trustees of, municipal corporation as, 81

what included in term, 78

## INDEX

CORPORATE OFFICE. *See title ACCEPTANCE OF OFFICE.*

CORPORATE STOCK. *See title STOCK.*

CORPORATION. *See titles MUNICIPAL CORPORATION; COMMON LAW CORPORATION.*

CORPSES, 83—87

- anatomical examination of, 83
- bodies of drowned persons, 84—85
  - burial of, 84
    - expenses of, 84
    - notice of finding, 85
    - reward for, 85
  - persons dying of infectious disease, etc., 85—86
    - burial of, 85
- Infectious Disease (Prevention) Act, 1890, provisions of, 85—86
  - port sanitary authority, application to, 85
  - powers of medical officer of health under, 76
  - public conveyances, use of, 86
  - unburied bodies, as to, 86
  - removal to mortuary, order for, 85
    - obstruction, penalty for, 85
  - “wake,” penalty for holding, 86
- burial of, by public assistance authority, 85
  - responsibility for, 83
- custody of, 83—84
  - executor, rights and duties of, 83
    - Anatomy Act, 1832, s. 11, provisions of, 83
  - master of workhouse, 84
  - relatives, duties of, 83
- London, provision of mortuaries, etc., in, 87
  - statutes affecting, 87
- nuisance caused by, 87

CORRUPT AND ILLEGAL PRACTICES, 88—97

- avoidance of election on, 89
- corrupt and illegal practices distinguished, 89
- practices, 89—90
  - bribery, 89
  - false declaration as to election expenses, 90
  - personation, 90
    - aiding and abetting, etc., 90
  - punishment for, 90
  - relief from, 95
    - acts of agents without knowledge or consent of candidate, 95
  - treating, 89
    - mere hospitality is not, 89
  - undue influence, 90
- election of district parish councillors, adaptation of Municipal Corporations Act, 1882, Part IV., to, 92—93
  - application of Municipal Corporations [(Corrupt, etc., Practices) Act, 1884, to, 93

expenses of candidates at elections, 93—95

- county councils, 93
- district and parish councillors, 93
  - no limit to, 93
  - return of, 93
- municipal elections, 93
  - limit of, 93

- payments by candidates, 94—95
  - time for sending in claims, 94
    - exceptions to, 94
  - what may be paid for, 95
    - clerks, etc., numbers of, 95
    - committee rooms, 95
    - expenses of conveyance of election to poll, 95
    - general expenses allowable, 95
    - polling agents, 95

CORRUPT AND ILLEGAL PRACTICES—*continued.*

expenses of candidates at elections—*continued.*

payments by candidates—*continued.*

what may not be paid for—

expenses of conveyance of electors to poll, 95

payments for committee rooms in excess of number, 95

made to induce person to withdraw his candidature, 95

to elector for use of premises, 95

return of, 94

inspection of, 94

general note on, 88—89

illegal practices, 90—92

by person other than candidate, 92

election expenses, as to, 91

false statements, publication of, 91

illegal hirings, 92

payments, 91—92

examples of, 92

invalidation of election by, 90—91

acts of candidate, 90—91

or agent, 91

third parties, 91

prevalence of, avoidance of election on, 92

relief from, 95

application for, notice of, 96

arising from inadvertence, etc., 96

election petition, on report of court of trial, 96

acts or guilty knowledge of candidate, as to, 96

practices other than treating or undue influence by agents, 96

failure to make return of expenses, as to, 95

provision applies only to municipal and county council elections, 95

illegal payment, hiring, etc., 96

offences of trivial and unimportant nature, 95

powers of election court, as to, 96

High Court as to, 96

London, costs of returning officer in, 96

election of metropolitan borough councillors, rules for, 96

vestries in, 96

Local Government Act, 1933, does not extend to election of L.C.C., 96

Metropolitan Borough Councillors Election Rules, 1931, Art. 24...97

amendment of, 97

## CORRUPTION IN OFFICE, 97—102

bribery at common law, 97—98

corruption of public officers, offence of, 98

members of local authority having pecuniary interest in contract, etc., 101

exemptions, 101

pecuniary interest, disclosure of, 101

penalty on failure to make, 101

record of, 102

sufficient, 102

removal of disability, 102

spouses, 102

officers of local authority having pecuniary interest in contract, etc., 102

to give notice of, 102

penalty on failure, 102

not to accept fee or reward other than proper [remuneration, 102

“officers,” meaning of, 102

statute law, 98

offences, 98—99

“advantage,” what constitutes, 99

by agent, 99

“agent,” “principal,” persons included in terms, 100

person not member, officer or servant of public body, 99

jurisdiction of courts to try, 100

prosecutions at common law, 100

penalties under, 100—101

Prevention of Corruption Acts, 1906, 1916, provisions of, 98

## INDEX

### CORRUPTION IN OFFICE—*continued.*

statute law—*continued.*

prosecution under, consent of Attorney-General to, 100

Public Bodies Corrupt Practices Act, 1889, provisions of, 98

“prison,” what included in term, 98

“public office,” meaning of, 98

transactions forbidden to a member or an officer of a local authority contracting  
[with the authority, 101]

### COSTING, 103—113

centralisation of control, 104—105

advantages of, 104

arguments against, 105

“centralisation,” meaning of, 104

co-operative purchasing, 105

advantages of, 105

methods of, 105

departmental costing standards, 106—108

expenditure groupings, examples of, 106

standards for, 107

costs and units, 108

expenses of administration, 113

general note on, 103

housing, 112

constructional, 112

maintenance, 112

mechanisation of, 103—104

purposes of, 104

observations in conclusion, 113

rate fund services, 108—110

cleansing, 108

hospitals, 109

lighting, 109

parks, 109

works, 109—110

roads and streets, 109

private streets works, 110

sewers, 110

sewage disposal works, 110

subsidiary accounts, 110

reconciliation with financial records of, 112

trading undertakings, 110—111

electricity, 110

gas, 111

transport, 111

water, 111

### COSTS, 114—117

incurred by public authorities in non-contentious matters, 114

of local inquiries, 116

promotion of or opposition to Bills in Parliament, 115—116

Local Government Act, 1933, Part XIII.,

[provisions of, 115

saving clause for existing rights, 116

provisional orders, Local Government Act,

[1933, s. 285 (2), provisions of, 116

power to borrow for purposes of, 116

Public Authorities Protection Act, 1893, right to costs under, 114

action for damages, money paid into court, where, 115

tender, in case of, 115

“judgments,” meaning of, 114

limitation of right, 115

power of judge to deprive successful defendant of, 115

taxation of, 116

clerk of the peace, examination by, 117

does not conclude auditor, 117

items as between local authority and ratepayers, allowance of, 117

on conveyance, 117

- COSTS IN CRIMINAL CASES, 118—126  
 Costs in Criminal Cases Act, 1908...118—125  
 application to London, of, 126  
 of, general note on, 118—119  
 person not ultimately tried, where, 119  
 change in the financial relations between county and county borough owing [to provisions of, adjustment of, 121  
 committal under Vagrancy Act, application of, 118  
 costs payable under Poor Prisoners Defence Act, as to, 121—122  
 defence undertaken at request of court, where, 122  
 higher scale, discretion to allow, 119  
 “indictable offence,” definition of, 118  
 of offences committed in county borough, 120  
 within the Admiralty jurisdiction, 120  
 payable out of local funds, 119  
 jurisdiction of courts as to, 119  
 justices as to, 119  
 payment by defendant or prosecutor, order of court for, 123—124  
 by defendant—  
     evidence of means, 123  
     no power to inflict imprisonment in [default of, 123  
     suspension of order pending appeal, [123  
     under Probation of Offenders Act, [123  
     where accused under seventeen [years of age, 123  
 prosecutor—  
     discretion of justices to order, 124  
     amount exceeding £25, where, [124  
     under s. 6 (2)...124  
 in addition to order for payment out of local [funds, 124  
 of, attendance of treasurer for purpose of, 121  
 procedure under, 120  
 recovery of costs paid under, Criminal Justice Act, 1925, s. 14 (4), provisions [of, 121  
 regulations under, 122—123  
 where offence committed in one county and offender apprehended in [another, 121  
 witnesses to character only, 120  
 Summary Jurisdiction (Appeals) Act, 1933, under, 125  
 appeal aid certificate, as grant of, 123  
 application to appeals under Criminal Justice Act, 1925, s. 7 (1)...126

COTTAGE GARDENS. *See title DERATING.*

- COTTAGE HOLDINGS, 126—129  
 advances by council for purposes of, 129  
 Agricultural Land (Utilisation) Act, 1931, provisions of, 126—127  
 “cottage holding,” definition of, 126  
 provision by county and county borough councils of, 126—127  
 delegation to minor local authority of powers of, 129  
 defrayment of expenses of, 129  
 purchase or lease of, conditions of, 127, 128  
 breach of, recovery of possession on, 128  
 death of owner while subject to, 128  
 due payment of instalments, 128  
 insurance and repairs, as to, 128  
 intoxicating liquors not to be sold on, 128  
 not more than one dwelling-house to be erected, 128  
 permanent residence, 127, 128  
 relaxation of, 128  
 restrictions as to sub-letting, etc., 128  
 satisfactory cultivation, 127, 128  
 registration of county or county borough council as proprietors of, 29

# INDEX

## COTTAGE HOLDINGS—*continued.*

- small holder, sale or letting to, 127
- conditions of, 128
- consideration for, 127
- payment of, 127

## COTTON CLOTH FACTORIES. *See title FACTORIES AND WORKSHOPS.*

## COTTAGE HOSPITALS. *See title VOLUNTARY HOSPITALS AND INSTITUTIONS.*

## COUNCILLORS. *See titles BOROUGH COUNCILLOR; COUNTY COUNCILLOR; DISTRICT COUNCILLOR; PARISH COUNCILLOR.*

## COUNSEL, EMPLOYMENT OF, 130—133

- by local authorities—
  - at local inquiries, 132
    - decisions of Bar Council as to, 132
  - inspection of documents, opinion of counsel, “document” whether, 133
  - on promotion of or opposition to Bills, 132—133
    - no payment to be made to member of council, 133
  - question of compensation for compulsory acquisition of land, 133
  - power to disallow fees of, 133
- local authorities, barristers as members of, 131
  - decisions of Bar Council as to, 131
  - officers of, 130—131
    - decisions of Bar Council as to, 131
- legal proceedings by, note on, 130

## COUNTY ACCOUNTANT. *See title FINANCIAL OFFICER.*

## COUNTY ACCOUNTS, 134—146

- accounts, forms of, 137
  - inspection of, 137
    - abstract of and auditor's report, 137
    - “as audited,” 137
  - certain documents deposited prior to district audit, 137
  - order for payment of money, 137
  - right to copies of, 137
- county fund, payments to and from, 134
  - rate fund services, separate accounts for, 135
- expenses incurred under any enactment passed after June 1, 1934...135
- financial year, 136
- general and special, 134—135
  - expenditure may be either, 135
- London, application of Local Government Act, 1933, Parts X. and XI. to, 146

- County Council, accounts of, 146
  - “General County Account,” 146
  - “Special County Account,” 146
- separate accounts—
  - Consolidated Loans Fund, 146
  - Housing, 146
  - Mental Hospitals, 146
  - Public Assistance, 146

## methods of accountancy, 1—9

- accounts, abstract of, 143—145
  - as audited, 146
  - deposit and inspection of, 146
  - suggested form of—
    - aggregate balance sheet, 144
    - balance sheet, 144
    - epitome of accounts, 144
    - general review, 143
      - statistics, 143
    - index, 144
    - revenue accounts, 143
  - payment of, 138—139
  - orders for, 138—139
  - urgent payments, 138—139
    - confirmation of, 139

COUNTY ACCOUNTS—*continued.*methods of accountancy—*continued.*

balance sheet, 142—143

aggregate, 143

classification of assets in, 142—143

for each rate fund or principal service, 142

outstanding loans, 142

cash book, 139—140

cash register, 140

grouping receipts, 139—140

ordering of goods, 138

petty cash, 139

regulations as to, 139

subsidiary books, 140—141

contracts ledger, 140

creditors' ledger, 141

debtors' register, 140

register of periodical receipts and payments, 140

the ledger, 141—142

“receipts and payments” or “income and expenditure,” use of terms, 136—137

separate—

local taxation licences, 136

proceeds to county council, 136

motor licences, 135—136

amount of duties collected, statement as to, 136

proceeds of, audit, as to, 135

to National Road Fund, 135

small holdings, 136

annual income and expenditure account as to, 136

application of surplus income, 136

provided after April 1, 1926...136

rate charge on, 136

prior to April 1, 1926...136

contribution of Ministry of Agriculture to, 136

special, for elementary education, 135

diseases of animals, 135

public libraries, 135

Shops Act, 135

weights and measures, 135

Maternity and Child Welfare Act, 1918, s. 3, effect of, 135

various accountancy matters, 145—146

accrued income and charges, 145

central establishment charges, 145

costing, 145—146

COUNTY ALDERMAN. *See title ALDERMAN.*COUNTY ANALYST. *See title ANALYST.*COUNTY APPORTIONMENT. *See title GENERAL EXCHEQUER GRANTS.*

COUNTY BOROUGH, 147—156

acquisition of land by, 155—156

corporate land, 155

powers of leasing, etc., 155

halls, offices and other buildings, 156

power to hold land without licence in mortmain, 155

administratively self-contained, 147—149

council, committees and joint committees, 151

appointment of, 151

finance committee, as to, 151

joint committees appointed under other enactments, 151

finance, 151

audit of accounts, 152

borrowing, law as to, 151

general exchequer grant, 152

functions of, 149, 152

appointment of coroner, 152

burial authority, as, 153

## INDEX

### COUNTY BOROUGH—*continued.*

council, functions of—*continued.*

- certain functions of justices in petty sessions, 153
- abolition, etc., of fairs, 153
- grant of licences, 153
- civil functions and liabilities of vestries, 153
- mental institutions, as to, 152—153
- powers, duties and liabilities of county council transferred to, 152
- protection of rights of way, common, etc., 153
- repair of bridges, etc., 152
- under Education Act, 1921...154
  - Housing Acts, 154
  - Land Drainage Act, 1930...154
  - Public Health Acts, as "urban authorities," 154
  - Poor Law Act, 1930...154
  - Private Street Works Act, 1892...151
  - Road Traffic Act, 1930...154
  - Town and Country Planning Act, 1932...154
- meetings and proceedings of, 150—151
  - voting on contract, prohibition of member having pecuniary [interest in, 150
- membership of, 150
  - qualification and disqualification for, 150
  - acceptance of office, resignation, etc., 150
  - paid officer engaged in administration of poor law, as to, 150
  - proceedings against disqualified person acting as member, 151
- not a corporate body, 150
- subject to law governing the council of non-county borough, 149
- creation of, 148
  - "district council," interpretation of term, 148—149
- introductory note, 147—149
- mayor, aldermen and councillors of, 149—150
- municipal corporation of, exercise by council of functions of, 150
  - incorporation of, 150
  - name of, 150
- officers and staff, 154—155
  - qualifications and remuneration of, 155
- status and constitution of, 149—150

### COUNTY BOROUGH APPOINTMENT. *See title GENERAL EXCHEQUER GRANTS.*

### COUNTY BOROUGH, CREATION OR ALTERATION OF, 156—160

- alteration of boundaries, Local Government Act, 1933, provisions of, 159
  - accretions from sea, annexation of, 160
  - alterations of watercourses, on, 160
  - extension of, on agreement by county council only, 160
  - grant of commission of peace and quarter sessions on, 160
  - local inquiry as to, 159—160
  - proposals for, 159
    - joint by county council and, 160
  - provisional order for, 159—160
  - confirmation of, 160
- creation of new, effect on county finance, 157
  - former methods of, 157
  - local Acts, 158
  - present law, 158
  - recommendations of Royal Commission, 157—158
- introductory note, 156—158

### COUNTY BRIDGE. *See title BRIDGES.*

### COUNTY BUILDINGS. *See title OFFICIAL BUILDINGS.*

### COUNTY COUNCIL, 161—177

- a body corporate, 163
- acquisition of land by—
  - appropriation to other purposes, 176
  - compensation on, 177

COUNTY COUNCIL—*continued.*

- acquisition of land by—*continued.*
- appropriation to other purposes—*continued.*
- nuisance, 176
- restrictive covenants, as to, 177
- by agreement, 175
  - in advance of requirements, 176
  - compulsory purchase, 176
- Local Government Act, 1933, Part VII., provisions of, 175
  - statutes excepted from, 175
- power of leasing, 177
- sale of, original vendor has no right of pre-emption, 177
  - surplus land, 177
- administrative counties, division of, 163
  - division of England and Wales into, 162—163
- aldermen, 163
  - election of, 163
  - number of, 163
- chairman and vice-chairman of, 163
- committees of, 168
  - appointment of, 168
  - inclusion of non-members of council in, 168
- delegation of functions to, 169—170
- finance, 169
  - duties and powers of, 169
  - joint, power to appoint, 169
  - principal, 168
  - recalcitrant, control of, 170
  - standing joint, of quarter sessions and, 169
  - under Old Age Pensions Act, 1908...168
- common seal of, 163
- councillors, 164
  - election of, 164
  - electoral body, 164
  - number of, 164
- delegation and default powers, 170
- finance, 173—175
  - annual budget, 173
  - borrowing by, 174
    - issue of stock, 164
    - loans for advances to parish councils, 174
    - purposes for which, 174
  - classification of expenses of, 173
  - county fund, receipts and payments, 173, 174
  - derivation of income of, 173
- formation or dissolution of, 163
- functions of, 164—165
  - agriculture, in relation to, 165
  - as authorities for public assistance, 164
    - highway authority, 164
  - control of theatres, theatrical agencies, etc., 165
  - delegation to borough or district council by, 170
  - inspection of dairy cattle, etc., 164
    - weights and measures, 164
  - prevention and treatment of disease, 165
    - of adulteration of food and drugs, 164
  - protection of wild birds, 165
  - registration and licensing of vehicles, issue of drivers' licences, etc., 165
    - of nursing, etc., homes, 164
  - supervision of work of sanitary authorities, 165
  - under Education Act, 1902...164
    - Local Government Act, 1888...164
  - welfare of the blind, 165
- land and other property of, 175
  - gifts of, 176
- London, membership of, law as to, 186
- meetings and proceedings of, 170—183
  - meetings—
    - agenda paper, contents of, 173

## INDEX

### COUNTY COUNCIL—*continued.*

meetings and proceedings of—*continued.*

meetings—*continued.*

annual, 170, 171

business to be transacted at, 171

chairman at, 171

convention of, 171

notice of, 171

dates of, 171

decisions, how taken, 172

deemed to have been duly held, 172

minutes of, production of signed, effect of, 172

quorum, 171

regulation of, 170

standing orders, 172

failure to comply with, 172

power to make, vary or revoke, 172

officers and staff of, 165

analyst, 166

clerk, 165

deputies, 166

for efficient discharge of council's functions, 166

inspectors, veterinary, 166

weights and measures, 166

medical officer of health, 165

provisions of Local Government Act, 1933, as to, 167—168

accountability of, 167

interest in contract of, 167

member of council may not be, 167

no fee or reward other than proper remuneration to be taken by, 167

notice of termination of office, 167

penalty for contravention of, 167—168

saving for existing officers, 168

security to be given or taken for, 167

surveyor, 166

treasurer, 165

term of office of, 166

under Education Act, 1921...166

Poor Law Act, 1930...166

organisation of, 169

perpetual succession of, 163

power to hold land without licence in mortmain, 163

make bye-laws of, 165

promote or oppose local or personal bills in Parliament, 165

prosecute or defend legal proceedings, 165

provision of halls, offices, and other buildings by, 175

rights, powers and duties of, 163

status and constitution of, 161—163

style of, 163

under Local Government Act, 1888...161—162

“ administrative business ” and “ judicial business,” 161

“ administrative county,” definition of, 161

application to Scilly Islands, 162

county of Southampton, division of, 162

non-county boroughs, classification under, 162

purposes of, 161

exceptions to, 161—162

COUNTY COUNCIL, CHAIRMAN OF. *See title CHAIRMAN OF COUNTY COUNCIL.*

COUNTY COUNCIL, CLERK OF. *See title CLERK OF COUNTY COUNCIL.*

COUNTY COUNCILLOR, 178—186

absence from meetings of, reason for, 180

vacation of office on, 180

authorisation of to institute or defend proceedings on behalf of council, 185

declaration of acceptance of office by, 180

before whom taken, 180

failure to make, vacancy in office on, 180

**COUNTY COUNCILLOR**—*continued.*

- declaration of form of, 180
  - time within which to be made, 180
  - vacancy in office of, 182
- disability from voting of, 182
- disqualifications for office of, 180—181
  - county coroner or deputy, 181
  - teachers in non-provided schools, 181
- disqualified person acting as, proceedings against, 182
- election of, 179
  - to fill casual vacancy, 179
- failure to attend meetings of council, effect of, 180
- holding office on June 1, 1934, saving for, 185
- interest in contract of, 182—183
  - by nominee or partner, 182—183
  - direct or indirect, 182—183
  - disabilities due to, 186
    - application of, 183
    - removal of, when, 183
  - disclosure of, 183
    - penalty on failure to make, 183
  - record of, right of, inspection of, 185
- spouses, 183
- London, qualifications for election to office of, 186
- qualification for office, 178
  - ownership, of land, as to, 178
  - “residence,” meaning of, 178
- resignation of office by, 180
- retirement of, 179
- retiring, eligibility for re-election, 178
- rights, duties and privileges of, 183—186
  - attendance at meeting, 183—184
    - right of inspection of accounts, etc., 184
      - minutes, 184
      - to take copies of accounts, 184
        - minutes, etc., 184
    - voting, 184
  - term of office, 179
  - travelling expenses of, 185

**COUNTY COUNCILS ASSOCIATION**, 186—188

- activities of, 187
- council and committees of, 187
- expenses of, 187
  - in relation to education, 188
- general note on, 186—188
- London County Council, not a member of, 188
- purposes of, 186

**COUNTY COURTS.** *See title OFFICIAL BUILDINGS.***COUNTY DISTRICTS**, 188—190

- accretions from sea, as to, 189
- alteration of boundary line due to alteration of watercourse, 189
  - in, 189
- consists of one or more parishes, 188
- “county district,” definition of, 188
  - use of term, 188
- in England and Wales, 189
  - organisation of, 189
- is a rating area, 190
  - area or constituent part of, of assessment committee, 190
    - guardians committee, 190
- London, expression does not apply to, 190
- urban or rural, change of name of, 189

**COUNTY ELECTORAL DIVISIONS**, 190—193

- alteration of boundaries of—
  - after review of county district, 192

## INDEX

### COUNTY ELECTORAL DIVISIONS—*continued.*

alteration of boundaries of—*continued.*

consequent upon alteration of areas under Local Government Act, 1933,  
[Part VI., 192]

local inquiry to be held, 191

order for, 191

representation by county council as to, 191

advertisement of, 191

copies to be sent to interested councils, 191

constitution of, directions to be observed, 192

division into polling districts, 193

of administrative counties into, 190

Local Government Act, 1888, provisions of, 190—191

one county councillor and separate election for each, 191

representations by county council for alteration of boundaries of, 191

numbers of, 191

on county council of, 190

### COUNTY ENGINEER. *See title COUNTY SURVEYOR.*

### COUNTY HALL. *See title OFFICIAL BUILDINGS.*

### COUNTY JUSTICES. *See title JUSTICES OF THE PEACE.*

### COUNTY LIBRARIAN. *See title LIBRARIAN.*

### COUNTY MEDICAL OFFICER OF HEALTH. *See title MEDICAL OFFICER OF HEALTH.*

### COUNTY OF A CITY OR TOWN, 194—198

Counties of Cities Acts, provisions of, 196

“county” under Licensing (Consolidation) Act, 1910...197

Municipal Corporations Act, 1882...196

Supreme Court of Judicature Act, 1925...196

Territorial and Reserve Forces Act, 1907...196

historical note, 194—196

“no necessary connection between a see and a city,” 195

not necessarily a county borough, 194

present position, for the purposes of local government, 196

sheriff, appointment of, 197

the City of Oxford, 197

duties of, 198

election of, prior to Municipal Corporation Act, 1835...195

qualification of, 198

the “Gloucester Case,” 195

### COUNTY OF A TOWN. *See title COUNTY OF A CITY OR TOWN.*

### COUNTY OFFICES. *See title OFFICIAL BUILDINGS.*

### COUNTY OF LONDON. *See title LONDON COUNTY COUNCIL.*

### COUNTY POLICE, 199—213

consolidation of county and borough forces, 200, 209—211

agreement for, provisions of, 210, 211

chief constable of county, powers of, 210

conditions of, inquiry as to, 210

constitution of—

by police authority, 201

chief constable, appointment and dismissal of, 200

of additional constables by, 202

deputy, powers, privileges, and duties of, 202

dismissal of borough constable by, 202

officer by, 203

appeal against, 203—204

powers of appointment and dismissal, 202

intermediate ranks, where necessary, 202

permitted ranks, 202

special duties, chief clerk, 202

detective section, 202

women police, 202

COUNTY POLICE—*continued.*constitution of—*continued.*

superintendent, appointment and status of, 202

as deputy chief constable, 202

“ county ” meaning of for police purposes, 200

discipline, code of, 203

publication of list of offences against, 203

offences against, charge of, procedure on, 203

County and Borough Police Act, 1859, s. 26, provisions of, 203

punishment for, 203

entry on conduct sheet, 203

dismissal, right of appeal against, 203—204

wrongful, officer cannot bring action for, 203

duties other than ordinary police duties—

by arrangement—

inspectors of beach trading, 208

common lodging-houses, 208

domestic servants registries, 208

fire appliances, 208

hackney carriages, 208

licensed boats, 208

markets, 208

street lamps, 208

statutory—

under Army Act, s. 103...208

Diseases of Animals Act, 1894, s. 43...208

Lunacy Act, ss. 13, 15...208

with consent of police authority—

collecting officer under Affiliation Orders and Criminal Justice

[Administration Acts, 209]

finance—

county fund, receipts and payments to or out of, 213

separate accounts to be kept of, 212

Home Office Grant, 212—213

preliminary estimate for purposes of, 213

income and expenditure, main heads of, 213

pensions, payment out of county fund, 213

Lincolnshire, as to, 213

Road Traffic Act, 1930, advances from, 213

introductory note, 199—200

mutual aid agreements, 211

parish constables, 211, 212

pay and allowances, 204—205

allowances—

boot, 205

detective, 205

extra duty, 205

plain clothes, 205

rent, 204

subsistence, etc., 205

temporary duty, 205

uniforms, 204

pay—

arrears of, action for, 204

forfeit of, 204

rates of, 204

stoppages from, 204

Police Authority, functions of—

approval of appointment of deputy chief constable, 200

appointment and dismissal of chief constable, 200

directions as to extra duties, 201

keeping order at assize courts, 201

division of county into police districts, 201

provision of pay, clothing, housing, etc., 201

station-houses and cells, 201

variation of numbers of county police, etc., 201

loss of services of police officer by, action for, 207

“ standing joint committee,” 199, 200

“ Police Authority,” use of term, 199

## INDEX

- COUNTY POLICE—*continued.*  
Police Federation, 205—206  
promotion, examinations for, 203  
powers of chief constable as to, 202—203  
qualifying service, 203  
regulations for, Police Act, 1919, provisions of, 199—200  
special constables, appointment of, 211  
expenses of, 211  
statutes affecting, 199  
status of—  
    elections, as to, 206  
    jury service, exemption from, 207  
    ceasing to hold office, return of clothing, etc. on, 207  
    liability for torts, 207  
    must not carry on or be interested in any other office or employment, [207]  
    neglect or violation of duty, liability for, 207  
    Public Authorities Protection Act, 1893, application of, 207  
    relationship of officer and police authority, 207  
    resignation or withdrawal, notice of, 207  
    warrants of commitment, execution of, 206  
temporary additions to force, conditions of service, 211  
    Police Act, 1890, s. 25, provisions of, 211

- COUNTY REVIEW, 214—236  
boroughs and districts in 1929, number of, 218  
de-urbanisation, 234  
first general review, 219  
    survey of position following, 235  
introductory note, 212—215  
Local Government Act, 1929, s. 46, as compared with Local Government Act, 1933, s. 146...219—220  
local government, consolidation of law affecting, 217  
    districts between 1847—1929, development of, 215—216  
    Royal Commission on, 216—217  
        recommendation of, 218  
        statistics before, 218  
London, adjustments of area in, 236  
    amalgamation of parishes in metropolitan boroughs, 236  
second and later reviews, 219  
    order of Minister of Health, 235  
    practical aspect of, 220  
    proposals, amended, submission of, 231—232  
        local inquiry into, 229  
            conduct of, 229  
            inspection of areas affected prior to, 229  
        modifications by Minister of Health, 230—231  
        procedure under Local Government Act, 1933, s. 146 (5)... [231—232]  
            position of adjoining county borough councils and county [councils, 233]  
        representations to Minister against, 228  
            objections which may be heard, 230  
        supplementary, 234  
        to be made at, 221 *et seq.*  
            consequential proposals, 227  
            copies to be sent to local authorities concerned, 222  
            formulation of, 221—222  
                considerations to be taken into account, 223—226  
            notice of making, 228  
            preparation of report as to, 226  
            submission of report and proposals, 227  
            what proposals may be made, 223  
purpose of, 221

COUNTY ROADS. *See title Roads Classification.*

COUNTY STOCK. *See title Stock.*

**COUNTY SURVEYOR**, 236—240  
 appointment and remuneration of, 237  
 chief executive officer in relation to roads and bridges, 239  
 county council to appoint fit person to be, 237  
 “county engineer,” use of term, 237  
 deputy, appointment and remuneration of standing, 238  
 temporary, 238  
 interest in contracts of, notice of, 240  
 member of council may not be, 238  
 not to take fee or reward other than proper remuneration, 240  
 office of—  
     advertisement of vacancy in, 238  
     antiquity of, 236  
     general note on, 236—237  
     member of council may not be appointed to, 238  
     notice on termination of, 237—238  
         person holding office on June 1, 1934, as to, 238  
     term of, 237  
 powers and duties of—  
     architectural work, as to, 239  
     certification of expenditure on roads maintained by county borough and [urban district councils, 239  
     classified roads and bridges, estimate for maintenance of, 239  
     control of rivers or streams, 239  
     highways and bridges, construction and maintenance of, 239  
     improvement or building lines on county roads, as to, 240  
     in connection with the transfer to county councils of the duty of main- [taining county roads in rural districts, 240  
     licensing of theatres, cinemas, etc., 239  
     new works on roads and road improvements, preparation of plans, estimates, [etc., for, 239  
     town planning, as affecting highways, to advise on, 240  
     under Public Health Act, 1928, s. 31...240  
     works on roads and bridges performed under contract, as to, 239  
 security to be given by, 240  
 subject to control of Minister of Transport, 238  
 superannuation, rights to, 239  
 to render accounts, 240

**COUNTY TREASURER.** See title **TREASURER**.

**COUNTY VALUATION COMMITTEE**, 241—247  
 amendment of schemes, recommendations by, 242  
 conferences of, 243  
 constitution of, 241  
     joint assessment area, in case of, 241  
 default in preparation of valuation list, 246—247  
 delegation of powers to institute, etc., proceedings in relation to valuation list, [244  
 establishment of county panel of valuers by, 245  
     cost of valuations, as to, 245  
 expenditure, remuneration of officers, 242  
     repayment of travelling, etc., expenses of members of county [council attending, 242  
 functions of—  
     an advisory body, 245  
     assisting rating authorities and assessment committees, 244  
     promoting uniformity in valuing property for rating, 244  
 information to be furnished by assessment committees and rating authorities to, [244  
 London, provisions of Rating and Valuation Act, 1925, as to valuation com- [mittees do not apply to, 247  
 objections to draft lists and appeals, may be a party to, 242—243  
     by, 243  
         appeal to High Court, 244  
         quarter sessions, 243  
             reference to arbitration of, 243  
             valuation, order for, 243  
                 security for costs of, 243

## INDEX

- COUNTY VALUATION COMMITTEE—*continued.*  
    objections to draft lists by appeal to quarter sessions—*continued.*  
        valuer, as witness, 243—  
            [244  
        appeals, decisions on, involving alteration of  
            [valuation list, 244  
        hearing of, right to appear and examine witnesses  
            [att, 243  
        occupier, notice of appearance in opposition to,  
            [242  
proceedings of, Local Government Act, 1933, s. 96, provisions of, 242  
proposals for revision of valuation list by, 244  
    hearing and determining, 244  
    objection by, 244  
relations with other authorities—  
    assessment committees, 246  
        one representative of to be member of, 247  
    Central Valuation Committee, 246  
        contribution to expenses by, 246  
        representation on, right of, 246  
    Rating Authorities, 245—246  
        consultations with county valuation office, recommendation as to, 246  
        supervision of valuations made by, 246  
standing orders with reference to, power of county council to make, vary or  
    [revoke, 242  
surveyors of taxes to furnish copy of annual values for income tax under  
    [Sched. A, on payment by, 214

- COUNTY VALUER, 247—249  
    appointment of, 247  
        special property, for valuation of, 247  
        terms and conditions of, 247  
    authority to institute or defend proceedings on behalf of valuation committee  
        [of, 248  
duties of—  
    advisory, 248  
    recommendations of Central Valuation Committee as to, 248—249  
    to assist valuation committee in promoting uniformity of valuation, 248  
        attend conferences, 249  
objection to or proposal to amend valuation list, valuer not to be present when  
    [assessment committee are considering their decision, 248  
powers of—  
    obstructing in the exercise of, penalty for, 248  
    entry, authority for, 247  
        production of, 247  
    notice of visit, 247

COURT HOUSE. *See* title OFFICIAL BUILDINGS.

COURTS AND PASSAGES. *See* title REPAIR OF ROADS.

COURTS, APPEALS TO THE. *See* title APPEALS TO THE COURTS.

COWKEEPERS AND COWSHEDS. *See* title MILK AND DAIRIES.

COWS. *See* title DISEASES OF ANIMALS.

- CREAM, 251—252  
    adulterated, sale of, 252  
        offering or exposing for, 252  
        penalty for, 252  
    or impoverished, importation of, 252  
        packages to be labelled, 252  
application of term, 251  
Artificial Cream Act, 1929, s. 1, application of, 252  
    not to composite articles, 252  
clotted, 251  
containing preservatives, sale of, 252  
    vegetable oils, sale of, 252

CREAM—*continued.*

- Milk and Dairies (Consolidation) Act, 1915, application of, 251  
 offences, 252  
 percentages of milk fat allowable, 251  
 Public Health (Preservatives, etc. in Food) Regulations—  
     offences against, proceedings as to, 252  
     provisions of, 252  
     “thickening substance,” meaning of, 252  
 registration of vendors and premises for sale of, 251  
 trade, statutes affecting, 251  
 unsound or decomposed, sale or deposit for sale of, 252

CRÈCHES. *See title DAY NURSERIES.*

## CREATION OF CITIES, 253—254

- by Letters Patent, 254  
     petition to King, 254  
         recommendation of grant, 254  
         record of, 254

Royal Charter, 253  
 city, may be either county borough or non-county borough, 254  
     reference in Act of Parliament to, 254  
 historical note, 253  
 present position, 253—254

## CREMATION, 234—261

- application for, statutory declaration on, 257  
 ashes, disposition of, 259  
     fees relating to, 261  
 Cremation Act, 1902, burial authorities in London under, 261  
     not to interfere with jurisdiction of coroner, 261  
     powers conferred under, 253  
     regulations under, 255, 256  
 crematoria, construction of, plans and site of, approval by Minister of Health,  
     [255]  
     proximity to dwelling-houses, as to, 255  
 donation of land or money for purposes of, 255  
 maintenance and inspection of, 256  
 opening or closing, notice of, 256  
 provision of, 255  
 regulations affecting, 256—257  
     penalties for breaches of, 260  
     safeguards in, 256—257  
     suspension or modification of, 258  
 “crematorium,” definition of, 255  
 fees, 261  
     to be deemed part of funeral expenses, 261  
     with reference to interment or disposition of ashes, 261  
 funeral service, no obligation on incumbent to perform, 261  
 introductory note, 254—255  
 London, burial authorities under Cremation Act, 1902 in, 261  
 medical certificates as to cause of death, 257  
 referee, appointment of, 256  
     coroner or medical officer of health may be, 256  
 duties of, 257—258  
     ascertainment of cause of death, 258  
     person having died from plague, cholera, or yellow fever,  
         [where, 258]  
     person who has died in place out of England or Wales,  
         [as to, 258]  
     remains of person buried not less than a year, in case of,  
         [258]  
     to order inquest in certain cases, 258  
     to see that safeguards imposed by regulations have been  
         [carried out, 257]  
 must take place in crematorium, of the opening of which notice has been given,  
         [256]  
 of remains of person who has left written direction to the contrary, 256  
     still-born children, 259

## INDEX

### CREMATION—*continued.*

- of unidentified remains, 256
- offences as to, 260
- registration of cremations, 259—260
  - appointment of register, 259
  - disposition of registers, etc. on closing of crematorium, 260
  - documents of, application of statutory provisions to, 260
    - inspection of, 260
    - marking, 260
  - does not apply to remains exhumed for the purpose of, 260
  - entries in register, 259
  - notification of registrar of births and deaths, 259
  - remains of person dying of plague, cholera or yellow fever,
    - [in case of, 259]
- death, or certificate of coroner, 257
- written authority of medical referee for, 257

### CRIMINAL CASES, COSTS IN. *See* title Costs in CRIMINAL CASES.

### CRIMINAL LIABILITY OF LOCAL AUTHORITIES, 262—266

- corporations as “persons,” 263
  - cases in reference to, 263—265
  - indictable offences, as to, 265—266
    - Criminal Justice Act, 1925, law prior to passing of, 265
      - s. 33, provisions of, 266
    - procedure, 265—266
      - jury, trial by, 266
      - order of committal, 266
      - plea, entry by representative of, 266
        - “representative,” meaning of, 266
      - service of summons, 266
      - summary, 266
    - local authorities as “corporations,” 262
      - power to defend legal proceedings of, 262
        - authorisation of member or officer of, 262
      - mens rea*, presumption of, 263
        - exceptions to, 263

### CRIMINAL LUNATICS, 267—269

- classes of, King's pleasure, 267
  - Secretary of State's, 267
- “criminal lunatic,” definition of, 267
- discharge of, warrant for, 267
- distinguished from other mental patients, 267
- duty of local authorities as to, 268
- found guilty but insane, 267
- insane upon arraignment, 267
- London, mental hospitals in, 269
- rate-aided mental patient, chargeability of, 268
  - soldier or sailor in case of, 268
- statutes relating to, 267
- transfer to mental hospital of local authority of, 268
  - appropriate treatment, medical certificate as to, 268
  - consent of visiting committee to, 268
  - cost of maintenance, 268
    - removal, 268
- Lunacy Act, 1890, s. 16, reception order under, 268
- order of Home Secretary for, 268
  - justices for, 268
  - chargeability of patient under, 268

### CROWN PROPERTY, 269—275

- Commissioners of Crown Lands, appointment and term of office of, 274
  - Works and Public Departments, appointment and term of
    - [office of, 274
  - powers and functions of, 275
- Crown Lands, Government departments in charge of, 274, 275
  - must observe orders and directions of the Treasury, 275
  - transfer of powers and duties between, 275

CROWN PROPERTY—*continued.*

exemption from land tax, 274

Crown lands in the occupation of private persons, as to,  
[274]

paving charges under Public Health Act, 1875...274  
rates of, 272

exemptions—

under Land Drainage Act, 1930...273

Telegraph Act, 1863...273

“exemption,” depends on occupation not ownership, 274  
property used for “public purposes” as to, 272

cases referring to, 272—273

“tidal lands,” as to, 273

Treasury contributions in lieu of, 273—274

re-valuation for purposes of, 273

of Crown from all statutes where not expressly named as bound, 269  
extent of doctrine, 269

income tax, not liable to, 274

Lands Clauses Acts do not apply to, 274

lands, compulsory purchase of, assent of Government department to, 274  
not subject to bye-laws, 274

occupation of, liability for rates on, 273

rights and interest in foreshore of, management of, 275

statutory exemptions—

Land Charges Act, 1925, effect of, 271

under Electric Lighting (Clauses) Act, 1899, s. 80...270

Factory and Workshop Act, 1901, s. 150...270

Infectious Diseases (Notification), 1889, s. 15...270

London Building Act, 1930, s. 226...272

Metropolis Management Acts, 272

Public Health Amendment Act, 1907, s. 12...270

(Smoke Abatement) Act, 1926, s. 11...276

Road Traffic Act, 1930...271

Town and Country Planning Act, 1932, s. 43...271

vehicles and persons in the public service of the Crown—

application of Road Traffic Act, 1890 to, 271

exceptions from, 271

Vehicles Lighting Regulations to, 271

belonging to the Crown, excise duty not payable in respect of, 271

CUL DE SAC. *See* DEDICATION AND ADOPTION OF HIGHWAYS.CUSTODY, INSPECTION AND DEPOSIT OF PARISH DOCUMENTS. *See*  
title RECORDS AND DOCUMENTS.

## CUSTOS ROTULORUM, 276—277

custody of commission of the peace, by, 276

county records by, 276

documents and records of county, powers as to, 277

historical note, 276

Lord Lieutenant of county as, 276

right of appointment of, 276

CUTTING OFF WATER SUPPLY. *See* title WATER SUPPLY.CYCLISTS. *See* title BICYCLES.DAIRIES. *See* title MILK AND DAIRIES.

## DAMAGE, COMPENSATION FOR, 278—285

amount of, 279—280

“full compensation” what is, 279—280

extra costs, 279

seizure of meat, in case of, 280

general note on, 275—279

liabilities of local authorities, 278—279

actionable damage, 279

negligent performance of power conferred by Act, as to, 279

London, Metropolis Management Acts, provisions of, 285

## INDEX

### DAMAGE, COMPENSATION FOR—*continued.*

- London, Public Health Act, 1875, s. 308, does not apply to, 285
- nature of damage, 280—281
  - future, 281
  - remote or consequential, 281
    - loss of business, 281
- negligent exercise of statutory powers, action for, 280
  - burden of proof, 280
- nuisance, mandatory injunction in case of, 280
- persons entitled, 281
  - where in default, 281
- provision for, 278—279
- Public Health Act, 1875, s. 308...278, 279, 285
  - does not apply to London, 285
- recovery of, 289
  - less than £20...280
  - statutory, 280
- statutory powers giving rise to, 281—285
  - enactments to prevent the spread of infectious disease, 283—284
  - public utility undertakings, as to, 283
- under Alkali Works Regulation Act, 1906—
  - laying of drains, 282
- Infectious Disease (Prevention) Act, 1890—
  - “unnecessary” damage, 284
- Public Health Act, 1875—
  - laying of sewers, 281—282
    - water mains, 281
  - provision of lavatories, 284
  - regulation of building lines, 283
- Public Health Amendment Act, 1907...283
  - “reasonable” compensation, 284
  - “unnecessary” damage, 284
- Public Health Act, 1925...284
- Towns Improvement Clauses Act, 1847—
  - removal of obstructions, 282

DAMAGES. *See title ACTIONS BY AND AGAINST LOCAL AUTHORITIES.*

DANCING. *See title MUSIC, SINGING AND DANCING.*

### DANGEROUS BUILDINGS, 286—291

- fencing off, 287
  - right of entry for purposes of, 287
- introductory note, 286
- London, in, complaint to petty sessional courts as to, 289
  - order of court as to, 290
  - removal of inmates by, 290
- council may secure, 289
- dangerous and neglected structures, sale of, 291
- disputes between council and owner, arbitration as to, 289—290
  - arbitrator, appointment of, 290
  - expenses of, 290
    - recovery of, 291
- disturbing pavement of street in securing, 289
- expenses, 191
  - land not to be built upon or structure let for occupation until [paid, 291
- order fixing amount of, 191
  - registration of, 191
- recovery of, 291
  - sale of structures, 291
    - payment of surplus to owner, 291

independent surveyor, report of, 290

London Building Act, 1930, Part X.—

authorities under, 288

dangerous structures, as to, 289

“district surveyor,” meaning of, 289

neglected structures, 290

provisions of, 288—289

DANGEROUS BUILDINGS—*continued.*

- London, in, neglected structures, 290
  - definition of, 290
  - order of petty sessional court as to, 290
  - notice to owner of, 289
  - surveyor's certificate as to, 289
- pulling down by council, sale of materials of, 288
- surveyor, requirements of, 287—288
  - council may carry out, 288
  - expenses of carrying out, 288
  - recovery of, 288
    - by distress, 288
    - "taking building or land," 288
    - compensation for, 288
  - notice to owner or occupier as to, 287
  - order of justices as to, 287
  - owner or occupier neglecting to carry out, 287
- "the safety of passengers," 286
- Towns Improvement Clauses Act, 1847, powers under—
  - action to be taken, 287—289
  - conditions to which applicable, 287
  - who may exercise, 286—287

DANGEROUS INDUSTRIES. *See title ALKALI, ETC., WORKS.*

## DAY NURSERIES, 292—293

- benefits conferred by, 293
- conduct of, note on, 293
- definition of, 292
- fees for children, 293
- grants in aid of, 293
- history of, 292
- provision by local authority, 292
  - voluntary association, 292
- recognition by Local Government Board, 293
- staff, 293
- under Maternity and Child Welfare Act, 1918, s. 1...292
- young children, arrangements of local authority for attending to health of, 292

DEAD BODIES. *See title CORPSES.*

DEAF CHILDREN. *See title BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.*

DEATH CERTIFICATION. *See title BURIALS AND BURIAL GROUNDS.*

DEATHS, REGISTRAR OF. *See title REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES.*

DEBENTURE STOCK. *See title Stock.*

DEBENTURES. *See titles BONDS; LOCAL LOANS.*

DECLARATION OF ACCEPTANCE. *See title ACCEPTANCE OF OFFICE.*

## DEDICATION AND ADOPTION OF HIGHWAYS, 295—305

- animus dedicandi*, 296
- dedication, and acceptance, 296
  - no formal act of required, 296
  - evidence of—
    - acts of ownership by highway authority, 302
    - maps, plans or history, 302—303
    - non-resident owner, 301
    - notice by landowner inconsistent with, 299
      - reversioner inconsistent with, 300
    - repair and upkeep by public money, 302
    - user—
      - as of right, 301
      - by particular individuals, 301
      - cul-de-sac, in case of, 301
      - examination of circumstances attending, examples, 300

## INDEX

### DEDICATION AND ADOPTION OF HIGHWAYS—*continued.*

dedication, evidence of—*continued.*

user—*continued.*

interruption of, 301—302

Rights of Way Act, 1932, s. 1 (3), (4), provisions of, 302  
prior to 1932...299

Rights of Way Act, 1932, provisions of, 299

land held by corporations for special purposes, as  
[to, 299

intention of, title to land precluding, burden of proof, 297  
limited, 304

obstructions, 304

presumption of—

existing roads, 303

prevention of, deposit of maps and statutory declarations by  
proof of by user, 296 [landowner, 300

restricted, 303—304

subject to nuisance, 304

right to levy tolls, 304

theory of, 296

who may dedicate—

lessee, as to, 297

consent of freeholder, 297

owner of fee simple and *sire juris*, 297

tenant for life, 297

the Crown, 297

under Universities and College Estates Act, 1925...297

highway, acquisition of by prescription, 295

dedication and not user constitutes, 296

by landowner, presumption of, 295

case law as to, 295

evidence of intention of owner as to, 296

highways, creation by statute, 304—305

public right of way, claim to, 295

### DEFAMATION, 305—312

action for libel, 306

slander, 306

damage, actual, 306

special, 306

accusation of crime, 306

actual damage, proof of, 306

defamatory statement, what is, 305—306

justification in cases of, 303

libel and slander included in term, 305

local authority, criminal information for libel on member of, 306—307

liability of member for, 308—310

admission of the press to meetings, 309—310

Local Authorities (admission of the Press to

[Meetings) Act, 1908, provisions of, 309—

[310

“local authority” application of, 310

temporary exclusion of, 309

defence of privilege, rebuttal of, 308—309

effect of invitation to reporters or “outsiders” to

[listen, 309

privilege excluded by wrong motive, 308

privileged occasion—acting with sense of

[duty, 308

publication where matter not of public

[interest, 309

for defamation by servant, 307

made or published within the scope of his employ-

[ment, 307

payment of expenses of servant by, in suit for, 310—311

statutory provisions as to payment of servant’s expenses in  
[proceedings for acts done in discharge of his

[duties by, 311—312

under Local Government Act, 1888, s. 66...311—312

DEFAMATION—*continued.*

- local authority, statutory provisions as to payment of servant's expenses in [proceedings for act done in discharge of his duties—under Municipal Corporations Act, 1882, s. 226 (3)...311  
Public Health Act, 1875, s. 265...311]
- London, Public Health (London) Act, 1891, s. 124, provisions of, 312  
extent of, 312
- of candidate for councillorship, 310
- power of local authority to sue for, 306  
libel affecting property, 306  
statement imputing misconduct of which it cannot be guilty, 306  
reflecting on members or officials of, only, 306
- slander of women, 306
- words actionable *per se*, 306  
spoken in connection with trade, business or profession, 306

## DEFAULTING AUTHORITY, 312—317

- as to protection of public rights of way, etc., 314  
Local Government Act, 1894, s. 26, provisions of, 314  
application to rural district council, 314
- provision and maintenance of sewers, 313  
Local Government Act, 1894, s. 16, provisions of, 314  
application to parish councils and parish meetings, 314  
transfer of functions to county council, 314
- Local Government Act, 1929, s. 57 (3), provisions of, 313—314  
application of, 313  
to district, and non-county borough councils, 313  
powers of Minister to enforce, 314
- Public Health Act, 1875, s. 299, provisions of, 313  
application of, 313  
to county boroughs, 313  
powers of Minister to enforce, 313
- Public Health (Smoke Abatement) Act, 1926, s. 7, provisions of, 313  
inquiry under, 313  
transfer of duty to county council, 313
- sufficiency and wholesomeness of water supply, 313
- default of local education authority under Education Act, 1921...315  
order of Board of Education on, 315  
resulting expenses, payments of, 315
- road lighting authority, powers of county council under Road Traffic under Food and Drugs (Adulteration) Act, 1928...316 [Act, 1934...316  
order of Minister on, 316  
recovery of expenses, 316
- Housing Acts, 315  
order of county council on, 315  
Minister on, 315
- Milk and Dairies Acts, 316  
order of Minister on, 316  
*mandamus* to enforce, 316  
transfer of duties to county council, 316
- Town and Country Planning Act, 1932...315  
order of Minister as to existing scheme, 315  
to prepare scheme, 315  
*mandamus* to enforce, 315
- failure of county council to hold inquiry under Local Government Act, 1933,  
[s. 141...314  
action of Minister on, 314
- make proposal for second review of county districts,  
[314  
action of Minister on, 315
- London, default of Common Council of City of, with respect to nuisances, 316  
authorisation by Minister of officer to act for, 317  
expenses, recovery of, 317
- metropolitan borough council under Public Health (London)  
[Act, 1891...316—317  
action by L.C.C. on, 316  
order of Minister on, 317  
*mandamus* to enforce, 317  
transfer of duties to county council, 317

# INDEX

## DEFALTING AUTHORITY—*continued.*

London, Public Health (London) Act, 1891, s. 101, statutes applying, 317  
transfer to county councils of functions where default has been made, 312—313  
preliminary note, 312

## DEFECTIVE CHILDREN. *See title BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.*

## DEFERRED CHARGES. *See title CONSOLIDATED LOAN FUND.*

## DEFICIENCY IN RATES. *See title RATE ACCOUNTS.*

## DEFINITIONS (STATUTORY), 318—323

definition clause, 318

general note, 318

Interpretation Act, 1889...318—320

“Act” to include local and personal, and private Acts, 320  
application of definitions, 320

to measures passed by Church Assembly, 320

“commencement” of Act of Parliament, 320

“county” to include county of a city and county of a town, 319

under Local Government Act, 1933, s. 305...319

“district council” under Local Government Act, 1894...319

Local Government Act, 1933...319—320

expressions referring to writing in past or future Acts, 320

“financial year,” 320

“land” to include messuages, tenements, buildings, etc., 319

“month” to mean calendar month, 319

“municipal borough,” reference to Municipal Corporations Act, 1882, as  
obsolete definitions, 319 [to, 319

“ordnance map,” 320

“person,” includes body corporate, 318—319

references to the Sovereign or Crown, 320

“service” of document, 320

under sect. 12—

“Board of Trade,” 319

“Postmaster-General,” 319

“Treasury,” 319

sect. 13—

“courts,” judicial definition of, 319

geographical and colonial, 320

words importing the masculine gender, 318

in the singular, 318

interpretation clauses, 321

“include,” 321

“mean,” 321

judicial interpretation, rules as to—

*eiusdem generis*, 323

general, 321—322

technical and scientific terms, 322

use of same word in different sense, 322—323

words judicially interpreted, 322

of limitation, 323

Statutes (Definition of Time) Act, 1880, references to time, as to, 319

## DELEGATION OF HIGHWAY POWERS, 324—336

agents for county council, district councils as, 331

borough and district councils, transfer of certain highway functions to county [council of, 326

bridges, carrying county roads, vesting in county council of, 325

repair and maintenance of, 324—325

classified roads, responsibility for maintenance and improvement of, 325

county council by—

agreements, conditions of, 331—333

appropriate terms applicable to local councils, surveyor and other [highway staff, 332

in town and country planning schemes, 333

as to manner in which, and persons by whom, work to be carried out, 331

roads not placed in satisfactory condition within prescribed [period, 331

building and frontage lines to be subject to approvals of county [council, 333

DELEGATION OF HIGHWAY POWERS—*continued.*

county council by—*continued.*

agreements, conditions of—*continued.*

determination as prescribed by Act, 333

district surveyor and staff to comply with instructions of county [surveyor, 332

estimates to be submitted by local council for maintenance and repair [work, 331

haulage, advertisements inviting tenders for, 332

insurance by local council, 333

legal work to be carried out by clerk to county council, 333

local councils to act as agents for county council, 331

keep special road account and banking account, 332

maintenance and improvement works, traders for, approval of county [surveyor, 332

materials to be used, approval of county council, 332

nothing to affect functions of local council under Local Government [Act, 1894, as regards rights of way, etc., 332

plans and estimates for proposed improvements to be submitted, 331

quarries, plant, etc., and highway depots of local cement to be taken [over by county council, 332

quarterly returns, etc., by local council, 332

reference of disputes to arbitration, 333

requisitions by local council for future expenditure to be subject to [approval of county surveyor, 332

wages, rates and payment of, to be approved by county council, 332

works and expenditure to be subject to approval of county council, [331

to be completed to satisfaction of county council, 331

application for, 328

grant of, operation of, 327—328

or refusal of, 327

refusal of, appeal against, 327

to Minister against, 329—330

time for making, 327

conditions of, 330

discretion as to, classified roads and county bridges, 327

determination of, appeal against, 338

district councils as agents for, 328, 331

does not result in transfer of roads, 328

claim of boroughs or urban districts of over 20,000 population, as to, [327

with respect to maintenance, repair and improvement of county bridges, [327

roads, 326

county council, transfer of highway functions of borough and district councils [to, 326

roads, constitution of, 325

functions to be exercised in boroughs and urban districts as to, [333

maintenance of rights of non-county borough or urban district [with population of over 20,000 as to, 325

expenditure on, 325

vesting in county council of, 325

delegated road, unsatisfactory condition of, action by county council, 336

delegation, 326—328

determination of, 336

notice of, 336

order under Local Government Act, 1929, s. 46, as to, 336

duties of rural authorities, as to, preservation of roadside wastes, 325

protection of rights of way, 325

to make bye-laws with respect to the construction of [new streets, 325

functions to be exercised in boroughs and urban districts as regards county [roads, 333

rural district by county council, 333

under Local Government Act, 1929, Part I. and Part II., Sched. I., [discharge of, 333

exceptions to, 333

## INDEX

### DELEGATION OF HIGHWAY POWERS—*continued.*

- functions under Private Street Works Act, 1892...333—334
  - exercise by county council of, 334
  - new streets, plans for, approval of rural district council, [334]
- highway authorities, prior to operation of Local Government Act, 1929, [Part III—
  - highways in borough or urban district, vesting of, 324
  - rural district councils no longer, 324—325
- main roads, maintenance of, 324
  - responsibility of county council for, 325
- Ministry of Transport Act, 1919, classification of roads under, 324
- non-county borough or urban district councils, claim to maintain county roads [within area of, 325
- preliminary observations, 324—326
- Private Street Works Act, 1892, transfer to county councils of powers and [duties under, 326, 334
  - public bridges within a county, duty of county council to maintain and repair, [325
- area of borough, repair and maintenance of, 325
- relinquishment of, 335—336
- road officers—
  - agreement as to transfer or retention of, 334—335
  - in service of borough or urban district council, 335
  - Private Street Works Act, surveyor for the purposes of, 335
  - “ road officer,” meaning of, 335
  - salaries, as to, 335
- roads, classification of, 324
- rural district, functions to be discharged by county council in, 333
  - conditions of, 333
  - under Local Government Act, 1929...333
  - Private Street Works Act, 1892...333
    - expenses of, 333—334
- Public Health Acts, 333
- to borough or district council, incidental conditions of, 330
- transfer to county council of highway functions of borough and district councils, [326
  - unclassified roads, responsibility of borough and urban district councils for, 326
  - urban roads of a rural character—
    - application to county council for order declaring highway to be a main road, [329
    - Highways and Locomotives (Amendment) Act, 1878, s. 15, provisions [of, 329
      - refusal of, appeal against, 329
    - urbanisation of rural district, 328—329
    - increase of Exchequer grant on, 328
    - unclassified roads within, 328
    - may continue to be county roads, 328
    - maintenance of, contribution of urban district council towards, 328

DEMOLITION. *See title DANGEROUS BUILDINGS ; INSANITARY HOUSES.*

DEMOLITION ORDER. *See title SLUM CLEARANCE.*

### DENSITY OF BUILDINGS, 337—341

- bye-laws with reference to, 337—338
  - new buildings for human habitation, open spaces in front of, 337—338
    - rear of, 338
    - relaxation of bye-law, [where, 338
- fixing number of houses in block or row, 338
- “ density zone,” meaning of, 339
- general note on, 337
- light and air, admission of, 340
- London, in, application of Town and Country Planning Act, 1932...341
  - local authorities under, 341
  - London Building Act, 1930, provisions of, 340
  - open spaces, in rear of buildings must be free from erections, 338

**DENSITY OF BUILDINGS—*continued.***

- schemes under Town and County Planning Acts, 338—340
- Cardiff, 339
- provisions as to, 338
  - limiting number of buildings, 338
  - no compensation for, 338
- Whitney, 339
- under local Acts, 338
  - objections by medical officer of health, as to, 338
  - appeal against, 338
- Public Health Act, 1875...337—338
- power of rural districts to make bye-laws, 337

**DENTAL INSPECTION AND TREATMENT OF SCHOOL CHILDREN.**  
*See title EDUCATION SPECIAL SERVICES.***DEPUTY LIEUTENANT.** *See title LORD MAYOR.***DEPUTY LORD MAYOR.** *See title LORD MAYOR.***DEPUTY MAYOR.** *See title MAYOR.***DERATING, 342—363**

- hereditaments affected, classes of, 343
  - agricultural, 343—344
    - allotments, 344
      - allotment gardens included in, 344
      - excluded land and buildings, 345
      - glass houses, 344
      - land for sport or recreation, 344
      - meaning of, “agricultural buildings,” 344
      - “agricultural hereditament,” 343
      - “agricultural land,” 343
      - “cottage garden,” 343
      - “market garden,” 343
    - pasture ground, 345
    - poultry farms, 344
    - woods, nursery grounds and orchards, 345
  - freight transport, 360
    - “canal transport purposes,” 361
    - canal undertaking, 360—361
    - “dock purposes,” 361
    - entries in valuation lists, 362
    - light railway, 360
      - under Railways Act, 1891...360
      - “merchandise,” meaning of, 361
    - premises excluded, 362
    - “railway transport purposes,” 361
    - railway undertaking, 360
    - “vessel,” meaning of, 361
  - industrial, 345—349
    - apportionment of value, 348—349
    - beer bottling, 359
    - blending of butter, 359
    - coffee grinding, etc., 359
    - definition of, 345
    - factories and workshops—
      - “altering, repairing, ornamenting or finishing,” as to, [358—359]
      - “by way of trade or for purposes of gain,” meaning of, [358]
    - excluded parts, 346
    - “factory” distinguished from “workshop,” 346
      - meaning of, 346
      - textile, 346
        - non-textile, 346

places used as factory or workshop, 345

not “industrial” when, 345

under Factories and Workshops Acts, 357—358

# INDEX

## DERATING—*continued.*

- hereditaments, industrial—*continued.*  
    factories and workshops—*continued.*  
        mineral railways, 348  
            “ mineral railway,” definition, 348  
            distinguished from freight-transport hereditament,  
                [348]  
            “ public supply undertakings,” 348  
        mines, 347  
            definitions of, 347  
            quarries and pit-banks, 347  
        “ occupied and used,” 349  
            “ primarily,” 349—350  
    pasteurising milk, 359  
    place used for stables, etc., 345  
    properties contiguous, 357  
        “ contiguous,” meaning of, 357  
        garages and stables, 357  
    purposes of occupation which disentitle to relief, 351—357  
        any other than those of factory or workshop, 356  
        distributive wholesale business, 353—354  
        housing or maintenance of road vehicles, 356—357  
        public supply undertaking, 355—356  
            “ retail shop,” 351—353  
            “ retail repair work,” 353  
        storage, 354—355  
    rag sorting, 359  
    retail shops, as to, 348  
        “ retail shop,” what included in term, 348  
    scrap metal works, 360  
    seed cleaning, 359  
    tea blending, 360  
    what are, 345  
    whisky blending, 359  
    wool sorting, 359

London in, hereditaments becoming or ceasing to be agricultural, industrial or  
[freight-transport, provisional lists of, 364

    law applicable to, 363—364

machinery, rateable, 343

relief granted, 362—363

    accrual of benefit, 363

        where rates payable by landlord, 363

    agricultural hereditaments, as to, 362—363

        farmhouses and cottages not included, 363

    industrial and freight-transport hereditaments, in case of, 363

statutory provisions as to, 342—343

use of term, 342

## DESTRUCTION OF CLOTHING. *See title DISINFECTION.*

## DESTRUCTIVE IMPORTED ANIMALS. *See title MUSK RATS.*

## DESTRUCTIVE INSECTS AND PESTS, 364—371

crop infested with insects, removal or destruction of, 365

    compensation for, 370

        consent of local authority to, 370

        Minister of Agriculture, by, 370

        valuation for, 370

            arbitration as to, 370

“ crop,” what included in term, 365

*Destructive Insects Act, 1877—*

        central authority, under, 365

            orders of, 365

                certificates granted under, fees for, 366

                local authority to carry out, 365

                publication of, 366

    local authorities under, 366—367

        appointment of officers by, 367

            salaries and expenses of, 367

        expenses of, 367

DESTRUCTIVE INSECTS AND PESTS—*continued.*

- expenses of execution of Acts, 366
  - limitation of, 366
  - payment by local authorities, 366
    - Parliament, 366
- Forestry Commissioners, powers of, 366
  - "insect" what included in term, 365
- London, local authorities under the Act, 371
  - Public Control Committees and Department, [reference of duties to, 371
- methods of control, summary of existing, 367
- offences, penalties for, 370
  - prosecution of, 370
    - protection of persons giving information, 370
      - planting potatoes sold as immune, 371
- orders, of local application, request of local authorities for, 369
  - restricting importation of raw cherries, 369
- principal Orders in force—
  - Bulb Diseases (Isles of Scilly), 368
  - Colorado Beetle, 368
  - Destructive Insects and Pests, 368
  - Importation of Elm Trees and Conifers (Prohibition), 369
    - Plants, 368
  - Onion Smut, 369
  - Sale of Diseased Plants, 368
  - Silver Leaf, 369
  - Wart Disease of Potatoes, 369
- statutes affecting, 364—365
  - "the principal Act," 365

DESTRUCTORS. *See title REFUSE.*

DEVELOPMENT AND ROAD IMPROVEMENT FUNDS. *See title ROAD IMPROVEMENT.*

DEVELOPMENT OFFICER. *See title PUBLICITY OFFICER.*

## DIFFERENTIAL RATING, 372—377

- alteration of areas on, 376—377
  - agreements of public bodies or purposes of, 376
  - increase of burden, payments in respect of, 376
    - by way of annuity, 377
    - loan for, 377
- Local Government Act, 1933, Part VI, provisions of, 376
  - temporary provision for meeting debts and liabilities, 376
- as a consequence of financial adjustment on alteration of area, 372
  - abatement of rates, as to, 372
- introductory observations, 372—373
- parochial balances, adjustment of, 375
- Rating and Valuation Act, 1925, adaptation under, 373—374
  - as to boroughs and urban districts, 374
    - rural districts, 374
  - special properties, as to, 373—374
    - Ascertainment of Rateable Values Orders, 374
- Rating and Valuation Act, 1925, savings in, 374
  - application of, 374
    - "rates which are, shall be leviable," 374
    - "local Act" provisional order included in, 374
- Rating and Valuation Act, 1925, schemes under, 375
  - approval of Minister of Health, 375
    - publication of, 375
  - objections to, 375
    - local inquiry as, 375
  - preparation and submission of, 375
    - regulations for, 375
  - special, 375
    - distinguished from ordinary, 373
- relief of areas added to boroughs or urban districts, 373
- use of term, 372

## INDEX

DIPHTHERIA. *See title INFECTIOUS DISEASES.*

DIRECTOR OF EDUCATION, 377—385  
    appearance in legal proceedings by, 384  
        Local Government Act, 1933, s. 277, provisions of, 354  
    appointment of, 378—379  
        Board of Education, as to, 379  
        deputy, 383  
        disqualification of member of council for, 379  
        Education Act, 1921, s. 148, provisions of, 378  
            committee, powers of, 379  
        probationary period, 381  
        sub-committee, recommendations of, 378—379  
        university graduates, 382  
    compensation for loss of office, 384  
    duties of, 382—383  
        advisory, 382  
        carried out by town clerk or clerk of council, 378  
        intelligent anticipation, 382  
        re-organisation in accordance with recommendations of Hadow Report, as  
            [*to*, 382—383]  
    schools, and buildings relevant to, care of, 382  
        need for new, etc., advice as to, 382  
        supply of materials for use in, 382  
    subsidiary, 383  
    supervision of office staff, 383  
    to carry out policy of committee, 382  
duty to account, 384  
Education Act, 1902, conditions prior to passing of, 378  
    for administrative purposes, branches of, 380  
interest in contracts, etc., of, 385  
introductory note, 377—378  
official title of, 378  
    London, in, 378  
organisation of office of, 383—384  
    assistant education officers, appointment of, 383  
    relations with other officers of council, 383  
qualifications, academic, 380  
    arts or science degree, 386  
    legal knowledge, 380  
    experience, 381  
    personal, 381  
    report of Departmental Committee as to, 381  
rights of, 382  
tenure of office, 379—380  
    dismissal from, 379  
    notice as to, Local Government Act, 1933, provisions of, 380  
vacancies in office of, notification of, 381

DISALLOWANCE. *See title SURCHARGE.*

DISCONTINUED GRANTS. *See GENERAL EXCHEQUER GRANTS.*

DISCOUNT FOR RATES, 386—389  
    advantage to rating authority, 386—387  
    disadvantages of, and objections to, 387  
    discount in practice, 388—389  
        instalments, payment by, 388  
        introduction of, time for, 388  
        rate, and amount of discount to be shown on demand note, 388  
        within fixed period, on payment, 388  
    incidence of discount, 387—388  
        “discount date” payment before, 388  
    introductory note, 386  
London, in, no general statutory power to allow, 389  
power to allow, resolution of rating authority, 386  
    revocation or variation of, 386  
special rates, resolution of rural district council as to, 386  
statement on demand note as to, 386

- DISEASES, 389—393  
 chronic, 392  
 cancer, 392  
     notification of under Factory and Workshop Orders, 1919...392  
 tuberculosis, 392  
     notification of under Public Health (Tuberculosis) Regulations, 1930...  
     venereal diseases, 392 [392  
 epidemic, endemic and infectious, 390—391  
     notification of, power of Minister as to, 391  
 hospital districts for acute infectious disease, provision of, 392  
 hospitals, provision of by local authorities, 392  
 in general, 390  
     obligations of council, extent of, 390  
     responsibility of local authorities for treatment of, 390  
     “the province of modern public health administration,” 390  
 infectious, 390—392  
     acute, notifiable, 391  
     non-notifiable, 391—392  
     provision of hospitals and districts for, 392  
     “enteric” fever, what included in term, 391  
     “infectious disease,” use of term, 390  
     notifications and prevention of, responsibility of sanitary authorities as to,  
     of, transmission of particulars by district medical officer of [health, 392  
 London, in, statutory law applicable to, 393  
     authorities administering, 393  
 preliminary note, 389  
 Public Health Act, 1875, s. 131, provision of hospitals under, 390  
 publication of information on questions relating to, 393  
 subscriptions or donations to voluntary hospitals, payment of, 390  
 tuberculosis and venereal disease schemes, qualifications of officers employed on,  
     treatment of by county borough councils and county councils, 393  
     provision of institutions, etc., for, 393  
 venereal, prevention and treatment of, 393  
     arrangements by councils as to, 393  
     Public Health (Venereal Diseases) Regulations, 1916, provisions of, 393
- DISEASES OF ANIMALS, 394—414  
 agricultural committees, appointment of sub-committee for purposes of, 396  
     joint, constitution of, 397  
 “animals,” definition of, 395  
     extension of, 395  
 carcasses washed ashore, burial or destruction of, expenses of, 399—400  
 certificate of inspector as conclusive evidence, 412  
     on outbreak of, 404  
 control by Orders of—  
     anthrax, 403  
     basis of, 403  
     cattle plague, 404  
     epizootic abortion, 404  
     epizootic lymphangitis, 404  
     foot and mouth disease, 404  
         duties imposed on local authorities by, 404  
         glanders or farcy, 405  
         markets, sales and lairs, 407  
         methods of, 403—407  
             certificates of outbreak of disease, 404  
             notification of police, 404  
             restrictions, duration of, 404  
         parasitic mange, 405  
         pleuro-pneumonia, 404  
         rabies, 405  
         sheep-pox, 405  
         sheep-scab, 405  
         swine fever, 406  
         transit of animals, 406  
         tuberculosis, 406

## INDEX

### DISEASES OF ANIMALS—*continued.*

- Diseases of Animals Act, 1894, application of, 394
  - diseases within the scope of, 394—395
  - central authority under, 395
    - general functions of, 400—401
      - animals, affected, reservation for observation of, 400
      - slaughter of, 400
      - transit, etc., provisions as to, 400
    - fodder, etc., prohibition of importation of, 401
    - imported, quarantine or slaughter of, 401
      - regulation of ports for the landing of, 401
    - areas infected, declaration and orders as to, 499
    - orders, Exemption from Rules Publication Act, 1893... [401]
  - poultry as to, 401
  - under Dogs Act, 1906, s. 2...401
- compensation for animal slaughtered—
  - in case of—
    - cattle-plague, 409
    - foot and mouth disease, 409
    - glanders or farcy, 409
    - pleuro-pneumonia, 409
    - sheep-pox, 410
    - swine fever, 409
    - tuberculosis, 410
  - valuation of animal, 410
  - withholding, 411
- districts having a common boundary, agreements for exercise of powers [under, 396
- expenses of, 396—397
- submission to and approval of Minister, 397
- executive committees under, 396
- failure of local authority to enforce provisions of, powers of central authority [on, 401
- fees, charges and stamp duty, under, 400
- inspectors and officers under, 397—398
  - inspectors, appointment of police officers, 397
    - certificates of outbreaks of disease, by, 404
      - notification of police, 404
      - restrictions, duration of, 404
    - entry by, reasons for, 398
    - incompetence, neglect or misconduct of, 398
    - need not be whole time officer, 397
    - negligence of, liability of local authority for, 398
  - notices, reports, etc., by, 398
  - powers of, 378
    - throughout England, 378
  - remuneration, payment of, 397—398
  - veterinary inspector, appointment of, 397
- legal proceedings under, 411—413
  - dismissal of complaint, appeal against, 411
  - documents, secondary evidence of, 413
  - evidence, certificate of inspector is conclusive, 412
  - failure to give notice of outbreak, onus of proof, 412
  - fine, payment to informer or part of, 413
  - general notes as to, 412—413
  - order or regulation of local authority, proof of, 413
  - prosecution not barred by prosecution under Customs Acts, 412
- local authorities under, 395—396
  - establishment of committees by, 396
  - London, in, 395
  - new borough, in case of, 395
- London, Public Control Committees and Department of L.C.C. to carry out [provisions of, 413
- offences and penalties under, 411
- outbreaks of disease, dealing with, 397
- police, notification of disease to, 399
  - powers of under, 398—399
- poultry within, 395

DISEASES OF ANIMALS—*continued.*

Diseases of Animals Act, 1894, application of—*continued.*

provision for detached parts of counties and boroughs under, 396

s. 33, purchase or hire of land by local authorities for the purposes of, [402]

expenses of local authority in relation to, 399

borrowing for, 399

compensation for slaughter of tuberculosis cattle, 399

functions of local authorities, 402—403

as to imported animals, 402

wharves, stations, landing places, etc., 402

“wharf,” under Markets and Fairs Clauses Act, 1847...402

charge for use of, 402

bye-laws, 402

charges under, 402

direct powers, 402

expenditure and receipts, returns of, 402

regulations by, 402—403

tolls, reduction of, 402

submission of new schedule of, 402

horses, exportation of, certificate of inspector on, 409

unfit, provisions for slaughter of, 409

importation of Canadian and Irish animals, 407

landing and movements of, regulations for, 408

special markets for, 408

carcasses from European countries, prohibition of, 407

exceptions to, 407

fodder or straw, prohibition of, 407

raw tongues, destruction of containers, 407

packing materials, meat wrappings, etc., control of, 407

provisions and orders as to, 407—408

under Importation of Cats and Dogs Order, 408

animals landed in contravention of order, 408

licence for landing, 408

special conditions for certain animals in, 408

performing animals, as to, 408

quarantine, period of, 408

payment for, destruction in default of, 209

Importation of Horses, Asses and Mules (Great Britain) [Orders, 408

Importation of Pedigree Animals Act, 1925...408

Improvement of Live Stock (Licensing of Bulls) Act, 1931...

[408

introductory note, 394

London in, bye-laws as to conveyance of carcasses of dead horses, 414

regulations as to conduct of knacker's business, 414

regulations as to sheep, dipping, and movement of, 414

notification of, fee for, 403

outbreaks of certain, 400

certificate of inspectors, on, 404

notification of police, 404

restrictions, duration of, 404

statutes affecting, 394

objects of, 395

tuberculous cattle, slaughter by local authority of, compensation for, 399

DISINFECTION STATION. *See title DISINFECTION.*

## DISINFECTION, 415—429

agents for, 415

authorities responsible for, 423

port sanitary, 423

powers and duties of borough and district councils, 424

county councils, 423

borough and district councils, powers and duties of in relation to, 424

county councils, powers and duties of in relation to, 423

damage caused by, compensation for, 427—428

“dangerous infectious disease,” definition of, 416

## INDEX

### **DISINFECTION—*continued.***

- deratisation, 416
- disinfestation, 415
- diseases for which disinfection may be enforced, 425—426
  - under Port Sanitary Regulations, 1933...425
- enforcement by local authority of, procedure as to, 426—427
  - notices, 426—427
- enteric fever, regulations as to, 419
- exposure of bedding, clothing, etc., after exposure to infection, penalty for, 416
- infectious diseases whose transmission it is intended to prevent, 425—426
- London, in, bedding, clothing, etc., as to, 428
  - delivery up of, 429
  - damage caused by, compensation for, 428
  - house in filthy condition, 429
  - master or owner, notices to, 428
  - medical certificate requiring, 428
  - provision of premises, apparatus, etc., for purposes of, 428—429
  - public conveyances, as to, 429
  - Public Health (London) Act, 1891, provision of, 428—429
  - rubbish, removal and disinfection of, 429
- medical certificate requiring, 426
- persons responsible for—
  - consent to local authority carrying out, by, 427
  - “ master ” of the house, 425
  - notices to, 426—427
  - owner or occupier, 425
- Port Sanitary Regulations, 1933, administration of, 423
- power of entry for purposes of, 428
- subject matters—
  - articles affected, 424—425
  - dairies, 420
  - factories and workshops, 420
    - bakehouses, cleansing or limewashing, 420
  - houses and articles, 416—418
    - by local authority, 416
      - owner or occupier, 416
        - penalty on default by, 416
    - cleaning of, articles found in a filthy condition in dwelling-house, 418
      - local authority may require, 418
        - penalty on failure, 418
  - consent of owner to, 416
  - deposit of infectious rubbish, 418
  - general law as to, 416
  - houses on cessation of occupation, 418
  - infected house, shelter for inmates of, 418—419
  - Infectious Disease (Prevention) Act, 1890, s. 5, notice under, 417
  - letting house without prior, 416
  - provision of disinfecting station, 416—417
  - Public Health Act Amendment Act, 1907, s. 66, provisions of, 417
  - returning undisinfected books to library, 418
  - sending undisinfected clothing to laundry, 418
  - to check infectious disease, 416
    - destruction of bedding, clothing, etc., 416
      - compensation for, 416
      - medical certificate on, 416
  - lodging-houses under bye-laws, 420
    - cleaning and disinfecting, 424
    - seamen's, 420
  - markets and lairs, 421
  - premises affected, 424
    - canal boats, 424
    - “ house,” what term includes, 424
    - structures used for human habitation, 424
    - tents, vans, sheds, etc., 424
  - public conveyances, 419
  - ships, deratisation of, 422
    - Port Sanitary Regulations, as to, 420
    - recently infected with typhus, “ delousing ” of persons on board, 423
    - verminous, 422

DISINFECTION—*continued.*subject matters—*continued.*

verminous articles, 421

persons, 422

children attending elementary schools, powers of education  
[authorities, 422—423]

premises, 421

occupied by typhus fever patient, 421—422

ships, 422

use of term, 415

DISORDERLY BEHAVIOUR. *See title OFFENSIVE BEHAVIOUR.*